Pfahler, David

From: CCallahan [redacted]
Sent: Tuesday, July 10, 2012 6:47 PM
To: DPS Weights Measures
Subject: 85 Octane rules

I think the rules should stay as they are. When an individual doesn't like the rules or laws, he can't change them to make the rules fit his or her situation. The fuel industry is no better than anyone else, they should abide by the rules and laws. The 85 octane is bad for vehicles, so why change the laws when it is not in the best interest of the public? It only helps to clear the concience of the people breaking the laws. This is a bad idea and I am very much opposed to it. Deal with the people that are breaking the law, instead of making it legal for them to keep selling inferior fuel and possibly hurt consumers vehicles. Are you going to hold them resposible for the harm they do to the consumers vehicles? Make that part of the new rules and I don't think changing the rules would be an isssue for the fuel industry. Thank you.

Pfahler, David

From: [redacted]
Sent: Tuesday, July 10, 2012 4:27 PM
To: DPS Weights Measures
Subject: 85 Octane gasoline

I am totally in favor of 85 octane gasoline. I have used 85 octane gas in my vehicles (a 2010 Ford Taurus and a 2004 Chevy 4x4 pickup) since moving to the Rapid City area in April of 2011. My vehicles run and perform better using 85 octane than they do using a 10% ethenol blend. My mileage in both vehicles is 2 to 3 mpg better with 85 octane and I've not had one problem with engines. I know my mileage is better with 85 octane because when I am away from Rapid City I have to purchase an ethonal blend and my mileage drops. PLU5, the 85 octane fuel is cheaper to purchase.

Therefore, I deeply encourage you to approve the sale of 85 octane gasoline.

Richard Christoffer

JOHN E RENSTROM

[redacted]
Hot Springs SD 57747
[redacted]

July 11, 2012

Office of weights and Measures
118 Capital Ave
Pierre South Dakota 57501

Dear Sirs,

I'm writing to express my frustration with the desire to sell only sub standard gas in South Dakota. We have suffered with the to big to fail with our banks now we get the to big to have to follow the law with the Oil Company. As a consumer I watch the quality of Gasoline distributed in the western half of the state deteriorate for the last 20 years. Even though there are only 4 towns at the altitude it is recommended to be used at. Custer, Hill City ,Lead and Deadwood. I had no Ida that it was Illegal to sell 85 octane gas anywhere in this state. but it is all we have offered for the last 20 years. In the west, I loved it so when as we travel we could fill in Chamberlin and got 87 Regular gas again. The mileage picked up the car ran better. But much to my dismay the last few years all they have at Ocoma is 85 and you have to get out of state to get good quality fuel. We have been taking the Nebraska rout 20 instead of I90 on our trips east.. Better gas is one reason. If you can get General Motors to send me a letter stating that they will honor the warrantee on my 2010, 50,000 dollar truck if I us less then 87 octane gas in it. Then and only then will I agree to selling 81 octane gas to mix with 10% ETOH to bring the octane up to 85. Right now at least I can use the 85 enriched with !0% and burn 87 or put in the high priced 91 if necessary but a lot of stations only carry the regular or 10% blend out here. Getting gas for your lawn mower is all most impossible. Even using the 91 you not guaranteed not to get a hose full of what ever the guy before you put in his car. I have had to send my new mower in for a stuck valve that they would not warrantee because of poor quality fuel.. Who knew 91 might be 10% or not. As a consumer it's you people we are looking to to protect us from this kind of slide of the hand. I would rather pay more for good quality gas and get better performance out of my cars then pay out the nose in repairs and suffer the effects of poor gas on a daily basis. There is no such a thing as to big to have to follow the law. Please hold the line for us.

Sincerely,

John E Renstrom, a frustrated consumer

John E Renstrom

COPY

July 11, 2012

State of South Dakota
Governor Dennis Daugaard
500 East Capitol
Pierre, South Dakota 57501-2070

RE: 85 octane gas.

Dear Governor Daugaard,

First off I must apologize to you and your office. I sent you a second email concerning the 85 octane gas issue with the belief that I was getting the brush off from your office. I see this is not so as evidenced by your letter to me dated July 9, 2012. Thus my apology.

Unfortunately I cannot attend the public meeting scheduled for July, 20 2012 at 10:00 at the public safety building. I did call the Legislative Research Council concerning a second hearing in mid-August. I am waiting to see if they will allow me to write a letter voicing my concerns about 85 octane gas.

My main opposition to allowing 85 octane gas east of Wall, SD is that the lower octane gas is meant for higher elevations. The lower octane allows the gas to ignite easier in a car's engine at higher elevations. At lower elevations 85 octane gas give poor performance such as worse gas mileage and engine efficiency.

I can not help but feel that this may be a refinery tactic to sell lower octane gas with higher than normal profits in mind and expanded territory.

Thank you for your time and I hope you do accept my apology.

Sincerely,

Dan Convey

Dan Convey
[redacted]
Murdo, SD 57559-0149
[redacted]

July 13, 2012

Office of Weights & Measures

Sir:

I lived & worked in the Black Hills area for years and always used 85 octane (regular) and never had any problem - it should continued to be allowed. Otherwise many stations will go to 87 octane (ethanol) which my vehicles (esp a 89 Dodge pickup) will not run on.

The real problem as I see it is that some stations are selling 85 octane & labeling it 87 octane that's already illegal? right?

Just change the rules to allow 85 octane in the BHills (& some the counties)

My vehicles (all of them over the years I've done well on 85 octane - most of them get

octane gasoline with mandatory cautionary labels.

Until permanent rules are finalized, those in the industry who sell 85 octane are required to classify the fuel as "sub-regular" and post a cautionary label that reads: "Sub-regular octane. Refer to owner's manual before fueling."

A public hearing is scheduled Friday on permanent rules governing the

Attorney General Marty Jackley issued an opinion June 21 affirming the product is illegal to sell in the state.

Emergency rules were written to allow sale of 85 octane while the public comments on permanent rules.

Several Rocky Mountain states allow the sale of 85 octane fuel, and it has been a commonly sold product in

parts of Wyoming, where fuel reacts differently in engines.

A DPS investigation revealed gas stations allegedly mislabeling fuel and selling 85 octane marked as a higher grade. DPS sent 29 incidents of alleged mislabeling in 14 cities to various state's attorneys offices for further investigation and possible prosecution.

The 85 octane issue is

public safety website: www.dps.sd.gov. Information on the rules hearing also will be available at that site.

The public may attend the hearing and offer comments. Written comments are also being accepted from now through July 30. Written comments should be addressed to Office of Weights and Measures, 118 W. Capitol Ave., Pierre, SD, 57501. Emailed comments are being accepted at DPSWM@state.sd.us.

Contact Ryan Lengerich at 394-8418 or ryan.lengerich@rapidcityjournal.com.

over 200,000 miles before trading.

Quit making a mountain out of a mole hill and continue to allow 85 octane at least in the BH's area.

Regards,

Richard Peterson

Office of Weights & Measures
118 W Capitol Ave
Pierre, SD 57501

FROM 7-14-12

Memo HARLEN PEASE

I would like to have no limits on the percentage of octane some one can use.

I have a '94 Plymouth Voyager with 161,000 Miles on it now.

I have used E85 also used ½ Regulor Gas + ½ E-85 and used anything less then 10% ethanol. this Vehical has been totally trouble free,

Harlen

RECEIVED
JUL 17 2012
SOUTH DAKOTA DEPT. OF PUBLIC SAFETY

Office of Weights & Measures
118 W. Capitol Ave
Pierre, SD. 57501

HARLEN & PAM PEASE
MINA, SD 57451

July 14, 2012

Jenna Howell
South Dakota Dept. of Public Safety
118 West Capitol Avenue
Pierre, SD 57501

RE: Public hearing on 85 octane gas, July 20, 2012.

Dear Jenna,

Since I am unable to attend the public hearing concerning 85 octane gas on July 20, 2012 at the public safety building in Pierre, SDI would like to express my thoughts on this issue.

I am against the emergency authorization of 85 octane gas for the State of South Dakota east of Wall, SD for these reasons:

1. I would like for the State of South Dakota to tell the citizens of this state just what exactly the fuel emergency is and how likely it will occur.
2. 85 octane gas is meant for higher elevations because the gas is easier to ignite in a car engine at that higher elevation.
3. lower octane gas is less efficient at lower elevations causing a vehicle to get less gas mileage and poorer performance from the engine.
4. Because of the lower octane, refineries will be tempted to add ethanol which is corrosive to the plastic and rubber parts of the fuel system; and in hot weather ethanol will vapor lock a car because of a lower boiling point. All ready I have seen gas stations in Rapid City, SD selling gas with 30% ethanol.
5. I would like to point out that it is illegal to sell 85 octane gas in South Dakota. If a change is warranted I would like for the change to go through the proper process of debate in the South Dakota legislature, not through an emergency declaration.
6. Finally I wonder if the refineries in Wyoming and other western states are not taking advantage of supply and demand issues in eastern South Dakota to expand their territory and increase profits with lower quality gas.

I want to thank Jenna Howell for allowing me to express my thoughts on the 85 octane gas issue.

Sincerely,
Dan Convey
Dan Convey
[redacted]
Murdo, SD [redacted]
[redacted]
[redacted]

Enclosure:

1-14-2012

Dear Sirs,

On regards to marketing 85 octane gas in S.D.

My Dodge pickup specifies 87 rating. No more-no less. Weather at sea level or on Pikes Peak. I moved from Spearfish to Aberdeen in Nov. 2009. The nearby Clark gas station on Roosevelt Rd was selling supposedly 87 octane unleaded gas. After a couple of months I began experiencing poor starting. I moved to Sturgis in May of 2011.

The poor starting and slight power loss persisted. Before spending on diagnosis tests I tried switching to 87 octane with 10% ethanol. Quick starts and slight power gain gained back almost immediately.

As I believe my mpg is better with pure unleaded I was paying the extra 10¢ a gallon. But to pay it and then get an unacceptable product (illegal) is a double gouging. Criminal is more to the point. Hard to believe the State of S.D. ignored this violation of State Law.

Get rid of 85 octane, enforce the law and give me a choice between 87 octane with or without ethanol.

Harris M. Mervigon

[redacted]

Sturgis SD 57785-1640

OFFICE OF WEIGHTS & MEASURES
118 W CAPITOL AVE
PIERRE SD 57501

57501 $2.000

RECEIVED
JAN 16 2012
SOUTH DAKOTA DEPT. OF PUBLIC SAFETY

Dear DPSWM Official, **7/15/12**

I would like to comment about the recent story in the Aberdeen American News on 85 octane fuel and its use in the state. I have spoken with a person in the fuel transportation industry here in South Dakota and was told the following. The industry figured out that they could buy the unused 85 octane fuel in western S.D and sell it all over the state cheaper than what they would pay for fuel at the distributors. His explanation to me was that they were providing fuel at a lower price and saving consumers money.

The problem I am having with this knowledge is that it appears to be an unethical business practice due to the fact they did this while knowing full well that the fuel was miss labeled at the point of purchase. Now if this was being done without your knowledge then we have a big consumer fraud issue. And if the department of weights and measures for the state of S.D. normally monitors the quality and quantity of fuel delivery, but missed this little business practice. Well then I would say someone at the state level really screwed up. And it could very well be a case where this step was missed and new procedures need to be put in place to protect the citizens and visitors to our state.

Here is what I think cars today need 87 octane fuel or higher, lower octane fuels were used in in the 70's and 80's

on vehicles with carbureted engines to prevent pre-ignition on those engines.

I also am very surprised there are not stiffer laws for the crime of deception when it comes to the fuel suppliers. This reminds me of the lack of proper bonding for the seed company who came to S.D. stole from our farmers and left them holding the empty bag.

To me this is a very serious matter everyone responsible for should be answering some very hard questions.

This is a black eye for our State and for the entire State government.

Mark Nelson

[redacted]

Aberdeen .D. 57401

[redacted]

OUTDOOR POWER EQUIPMENT
INSTITUTE

July 16, 2012

via electronic mail David.Pfahler@state.sd.us

David L. Pfahler, Director
Inspections/ Weights & Measures Programs
South Dakota Department of Public Safety
Sutherland Building
118 West Capitol Avenue
Pierre, SD 57501

re: comments on Emergency Rules to permit sale of 85 Octane gasoline

The Outdoor Power Equipment Institute (OPEI) appreciates the opportunity to provide the following comments in response to the subject Notice of Intent to Adopt Emergency Rules.

OPEI is an international trade association representing the $15 billion landscape, forestry, utility and lawn equipment manufacturing industry, including the manufacturers of engines for this equipment. OPEI membership includes over 85 companies in the outdoor power equipment industry. OPEI works with federal, state and local groups to ensure that equipment operates efficiently, effectively and is fully emission compliant.

The presence of 85 octane gasoline in the marketplace poses an immediate risk of misfueling to owners and operators of outdoor power equipment.

Low octane gasoline fuels in the U.S. are a critical issue for OPEI's members as their products are powered by small gasoline engines. A fuel octane rating is a measurement of the fuel's ability to resist detonation and pre-ignition, commonly referred to as "engine knock". Engine knock increases pollutant emissions at best and quickly destroys engines at worst. Operating a small engine with 85 octane fuel, particularly at high temperatures and load conditions, increases the likelihood for engine knock and resulting engine damage.

Small engine manufacturers design, develop and precisely calibrate engines to satisfy two conflicting goals: safely generating sufficient power and compliance with applicable exhaust emission standards. Small engine manufacturers optimize their products for operation on the Federal Standard fuel, 87 octane gasoline, defined as (RON+MON)/2. The relatively simple fueling and ignition systems on small engines are not capable of adapting to lower octane fuels to minimize the risk of engine damage.

341 South Patrick Street • Alexandria, VA 22314
PH: 703.549.7600 • Fax: 703.549.7604 • www.opei.org

OUTDOOR POWER EQUIPMENT
INSTITUTE

Proper fuel selection is especially important for small engines in outdoor powered equipment as they are often operated for extended periods of time, in high temperature conditions and at high loads. However, slightly lower octane fuels, such as 85 octane, may only be safely used at high altitude in small engines as the thinner high altitude air reduces combustion temperature and pressure and therefore likelihood of knock. Unfortunately, using the same 85 octane fuel at standard elevations (<5000 ft.) can result in catastrophic failure and increased engine emissions.

Therefore, it is very important that only proper fuels be available to South Dakota consumers, namely 87 and higher octane blends only. The lower octane blends available in neighboring, high altitude states are likely to cause engine damage and result in excess pollutant emissions in South Dakota.

Lastly, it is important to stress that consumers need to be able to clearly and quickly understand when they are purchasing the proper octane blend warranted for their vehicle. This is done through a clear and visible service station octane labeling policy and then subsequent inspection and enforcement of the specified labeled octane rating.

The members of the OPEI appreciate the opportunity to comment on this very serious issue that will have significant impact to consumers that own and use outdoor power equipment.

Best regards,

Daniel J. Mustico
Director, Industry Affairs
Outdoor Power Equipment Institute
341 South Patrick Street
Alexandria, VA 22314
703-549-7600
dmustico@opei.org

Pfahler, David

From: jim ekstrand [redacted]
Sent: Tuesday, July 17, 2012 1:27 PM
To: DPS Weights Measures
Subject: 85gas

please do not let them sell this cheap 85 gas as my car and truck run so much better when i can use 87 gas with out ethanol

Pfahler, David

From: [redacted]
Sent: Tuesday, July 17, 2012 10:54 AM
To: DPS Weights Measures
Subject: 85 Otane

Hello
I believe that 85 octane gas should not be allowed to be sold in this state, why sell a fuel that does not meet most auto requirements. The other thing is stations selling this junk at higher prices than what it should be sold for. The governor should be standing up for the consumers not the oil and gas companies. Gas stations have been getting away with this for far to long without any enforcement.
Thank You
Dennis Olson
Rapid City, SD.

Topic: 85-octane

To: Office of Weights and Measures

From: Adam Sanders
[redacted]
Rapid City, S.D. 57701

85-octane gasoline is illegal, and should never have been processed and sold. For this reason the EPA and the Office of Weights and Measures must fine the processor or distribution plant for every gallon sold in S.D. It was their decision to violate the law, and they should be forced to pay back every cent of profit plus a hefty environmental fine for their decision to sell a fuel that they knew was in violation of the law. It is clear that the decision to continue to allow this fuel to be sold must have been made due to a monetary bribe to the governors office. So all parties involved in this process must pay the penalties.

I would also recommend that the state hire more inspectors and increase the frequency of inspection. I know for a fact that the diesel being sold in Western SD regularly does not meet the 15PPM standard, I and many others constantly have fuel injection problems due to the poor quality diesel being sold. If you leave SD in any direction and buy fuel, you can almost immediately have an increase in MPG and this has nothing to do with elevation, but everything to do with quality.

Thank you for your time

Adam Sanders
[redacted]

Pfahler, David

From: [redacted]
Sent: Tuesday, July 17, 2012 8:32 AM
To: DPS Weights Measures
Subject: 85 Octane rules

Why would our state Gov. change the laws (to allow 85 octane fuel to be sold in SD) when it could possibly damage ALL vehicles using the fuel. This could result in more expense to the citizens of our state.

It is my understanding that in the western part of the state the fuel would be 82 octane and then boosted to 85 octane by the addition of ethenol.This would increase the cost of fuel to me(and I believe all users)as my vehicles all get at least 10 percent less miles per gallon with the use of ethanol.

In these harder economic times, I see no reason to force (by changing this law) more expense on the citizens of SD.

Thank You,

Leigh McMasters

Dear Sir:

Writing to you with my feelings on 85 Octan We should not stoop this low to permit this to be sold in S.D.

It will harm your engine over a peroid of time, you get less gas milage.

Do you think that S.D. wants to be responsible for damaging some bodies engine? I don't than K so

Do you think that S.D. wants to be responsib for somebodies warrenty to be void? I don't than so. I say no on the use of this product.

the Shell station in Faulkton I heard is selling this produd with out the right information on the pumps.

A very concern citizen

Pfahler, David

From: Roger T. Gault [redacted]
Sent: Thursday, July 19, 2012 7:28 PM
To: Pfahler, David
Cc: Bixler, Lynn
Subject: EMA Comments re 85 Octane Proposed Regulations
Attachments: South Dakota Gasoline Octane Comments.PDF

Please see EMA's comments attached.

Roger Gault
[redacted]
Chicago, Illinois ▪ 60606
[redacted]

Please consider the environment before printing this email.

Truck & Engine Manufacturers Association™
Bringing Cleaner Power to the World Since 1988®

333 West Wacker Drive, Suite 810
Chicago, Illinois 60606
Tel: (312) 929-1970 | Fax: (312) 929-1975
www.truckandenginemanufacturers.org

July 20, 2012

VIA E-MAIL: DAVID.PFAHLER@STATE.SD.US

David L. Pfahler, Director
Inspections/ Weights & Measures Programs
South Dakota Department of Public Safety
Sutherland Building
118 West Capitol Avenue
Pierre, SD 57501

SOUTH DAKOTA
Department of Public Safety
Office of Weights and Measures

Public Comment Regarding 85 Octane in South Dakota

COMMENTS OF THE
TRUCK & ENGINE MANUFACTURERS ASSOCIATION

I. Introduction

The Truck and Engine Manufacturers Association ("EMA") hereby submits its comments on the Proposed Administrative Rule Language for 85 Octane in South Dakota ("Proposed Regulations").

EMA is the trade association that represents the world's leading manufacturers of internal combustion engines. The engines manufactured by EMA's members include those intended for ground supported non-handheld small spark-ignition equipment (hereinafter referred to as "Small SI engines") – one of the categories of engines that will be adversely affected by the proposed changes to gasoline acceptable for retail sale in the State of South Dakota as proposed in section 20:15:06:01.01 Minimum Octane Rating.

Based on extensive member company experience in designing, manufacturing, and selling Small SI engines, EMA urges the South Dakota Department of Public Safety Office of Weights and Measures to reject the Proposed Regulations and instead enforce the existing legal requirement for 87 minimum octane gasoline as regular grade in South Dakota.

II. Background

According to the administrative record associated with the emergency rules announced by Governor Daugaard on Monday, June 11, 2012, it has long been a state requirement in South Dakota that gasoline have a minimum octane rating ((R+M)/2) of 87.

South Dakota has relied upon ASTM fuel standards, including ASTM D4814, to define the required minimum properties of gasoline for retail sale in the State. While the ASTM D4814 standard specifies use of lower octane gasoline for pre-1984 vehicles in high altitude regions, no areas of South Dakota qualify as high altitude regions as defined by the standard. Engine manufacturers design products for on-highway and nonroad use while relying upon the fuel industry and regulators to ensure that the fuel used to power the engine will meet the minimum requirements of industry consensus standards such as ASTM D4814 and, in turn, meet customer expectations. Small SI engines are adversely affected by lower octane gasoline due to increased tendency for detonation and/or pre-ignition. These engines employ limited or no ability to compensate for lower octane gasoline through either real-time or service adjustments of operating parameters. In fact, any service adjustment outside a manufacturer's specified range is a violation of U.S. EPA anti-tampering regulations.

Fuel marketers have increasingly blended 10 volume percent ethanol with regular grade gasoline in accordance with EPA's Renewable Fuel Standard requirements. Ethanol has higher octane than conventional gasoline, and gasoline blend stock has been formulated to meet ASTM D4814 requirements, including grade 87 octane, when blended with 10 volume percent ethanol for regular gasoline. Ethanol-free gasoline meeting an 87 minimum octane rating was available in South Dakota for many years, and gasoline meeting an 87 minimum octane rating produced through blending blend stock with 10 volume percent ethanol should be readily available in South Dakota today. It appears, however, that refiners have chosen to provide gasoline blend stock with a lower octane rating such that when blended with 10 volume percent ethanol, the finished blend only achieves an 85 octane rating.

III. Unintended Consequences

A. Long Term Engine Durability

Irrespective of the fuel recommended by the manufacturer, historical data supports the conclusion that consumers typically will select the lowest cost fuel available, even if the cost of the recommended fuel is only nominally higher. The transition from leaded gasoline to unleaded gasoline, for example, resulted in significant levels of intentional misfueling due (in part) to very small differences in the cost of fuel. Sub-regular grade 85 octane gasoline is expected to find widespread use in nonroad engines and equipment regardless of manufacturer recommendations for minimum octane rating. Such use will lead to higher exhaust valve and piston temperatures and, ultimately, to reduced engine life. The extent of that reduction will depend greatly on the duty cycle of the engine and the frequency with which 85 octane gasoline is utilized. Unfortunately, the source of the problem will not be readily apparent, and South Dakota consumers will bear the brunt through product repair and/or premature replacement.

B. Misfueling

EMA is very concerned that the aspect of the Proposed Regulations requiring retailers to warn customers that 85 octane gasoline does not meet engine manufacturer requirements is inadequate. If the Proposed Regulations are adopted, it is imperative that a strong consumer warning label regarding manufacturer recommendations be required. In addition, a consumer education program regarding octane should be developed and funded by sale of sub-regular octane grade gasoline.

IV. Conclusions and Recommendations

It is impractical for engine/vehicle manufacturers to design, certify, build, and distribute products on a state specific basis. Thus, it is important that individual states, such as South Dakota, align their fuel requirements, including those for octane rating, with the requirements applicable at the federal level.

EMA fully supports the comments on the Proposed Regulations submitted by the Alliance of Automobile Manufacturers, the Global Automakers, the Outdoor Power Equipment Institute, and the Motorcycle Industry Council. We urge the South Dakota Department of Public Safety Office of Weights and Measures to reject the Proposed Regulation, which would have the effect of allowing the retail sale of sub-regular grades of gasoline. If, however, South Dakota approves gasoline with minimum octane rating of 85, it should do so only if it also mandates a consumer education program and requires pumps to be labeled with strong warnings regarding the proper selection of gasoline octane grade.

Respectfully Submitted,

Truck and Engine Manufacturers Association

Roger Gault
Technical Director

cc: Lynn Bixler (Lynn.Bixler@state.sd.us)

Pfahler, David

From: tom tillman [redacted]
Sent: Thursday, July 19, 2012 10:29 AM
To: DPS Weights Measures
Subject: fuel fraud

I feel that the people responsible for this fraud at the gas pumps should be handled just as any theft by deception would be, quickly and harshly! There is no question that these thieves knew what they were buying and also what they were selling. They also know the rules and regulations concerning the selling of these products and they still chose to defraud their customers. I feel very strongly that these theives should be punished to the maximum and their names and businesses should be made known so the public may better select who they do business with! Tom Tillman

Pfahler, David

From: roger thielsen [redacted]
Sent: Thursday, July 19, 2012 3:48 PM
To: DPS Weights Measures
Subject: 85% Octain

To whom it may concern:

I am a 61 year old male who currently resides in Moody County.
I have been a resident of this state since birth.
I vote VERY REGULARLY!
And I wish to state that it is my belief that it is totally improper that certain oil companies have defrauded the consumer by passing off 85% octane motor fuel as 87%.
The mere fact that this has been the practice of these companies just goes to prove that they can not be trusted!!
As I understand it they not only have mislabeled their product but also have taken it upon themselves to sell this inferior product in areas of this state where it has been illegal to do so.
I would ask the question of whether or not these oil companies charged less for this 85% product than the 87% product or did they just simply make a larger profit from it's sale.
Perhaps their real motive was and is just simply GREED!

I FIRMLY BELIEVE THAT IT WAS WRONG OF THE GOVERNOR TO EXCUSE SUCH AN ABUSE OF THE PUBLIC TRUST BY EXCUSING THIS FRAUDULENT BEHAVIOR AND ALLOWING THE PETROLEUM INDUSTRY TO DUPE HIM INTO ALLOWING THIS PRACTICE TO CONTINUE!

Hopefully the state legislature will see through this shame for what it is and reverse this mistake made by the Governor.

I am so very pleased that State Representative Mitch Farhgian and others are suing the oil companies over this criminal activity.

Please do not allow these criminals to set the standards for this state in regards to such things and please hold them accountable for their past actions.

This is just simply prof of that old adage that if you give them an inch the will take a mile!

If this is allowed soon the whole state will be flooded with inferior petroleum products, and what incentive will they have to correct this "SUPPOSED" 87% fuel shortage?

Sincerly;

Roger D. Thielsen
[redacted]
Elkton, South Dakota [redacted]

[redacted]

Former South Dakota Legislator Charlie Flowers called the Department of Public Safety on July 19, 2012 to express his concern on the issues of 85 octane and enforcement.

Howell, Jenna

From: Jared Landmark <jlandmark.svc@midconetwork.com>
Sent: Thursday, July 19, 2012 5:09 PM
To: Howell, Jenna
Subject: Comment on 85 Octane ruling

My name is Jared Landmark the CEO for Sioux Valley Coop . I guess I would like to make a comment in regards to the ruling to make legal 85 octane gasoline legal throughout the whole state of SD. We conduct our business near the I-29 corridore and for the most part never was concerned about the product as we never went to the terminals out west for our supply. I do understand the concern from those retaliers, refineries, and terminals about supply issues and the thought of having to reformulate gasoline for those higher alltitudes. However ever since we started to hear about cheap product out west we found it hard to be competitive from about Dec-Apr as transporters were hauling in the product 30-40cents cheaper than most could buy it for. We know of some wholesalers delivering product to retailers without letting them know of the octane difference and they were keeping profits for themself. My company was one of the first to be checked for mislabeling as inspectors verified bill of ladings as we were not selling the subgrade gas and had nothing to hide. Several comments were made through the media stating there was a gas shortage therefore the 85 octane gas had to be delivered to the east side of the state, that is a completely false statement as we never had any problems aquiring gasoline. You can go and check with all terminals and pipelines and ask what availability was during this apparent shortage. Myself and company officials do not want to see 85 octane gas anywhere east river as it creates another potential issue we have to contend with. Thank You!

Jared Landmark | CEO/GM | Sioux Valley Coop
P: 605.886.5829 | Fax:605.886.4995
Jlandmark.svc@midconetwork.com
Learn more about Sioux Valley Coop and our Cenex brand at www.siouxvalleycoop.com

July 19, 2012

Mr. David L. Pfahler
Director
Office of Weights & Measures
South Dakota Department of Public Safety
118 West Capitol Avenue
Pierre, SD 57501

Dear Mr. Pfahler:

The Motorcycle Industry Council (MIC) is a not-for-profit, national trade association representing manufacturers and distributors of motorcycles, motorcycle and ATV parts and accessories and members of allied trades. The Specialty Vehicle Institute of America (SVIA) is the national nonprofit trade association which represents manufacturers and distributors of all-terrain vehicles (ATVs) in the United States. The Recreational Off-Highway Vehicle Association (ROHVA) is a national industry organization that promotes the safe and responsible use of recreational off-highway vehicles (ROVs), also known as side-by-sides.

Thank you for the opportunity to provide comment on the proposed Administrative Rule to permit the sale of Sub-Regular Unleaded 85 and 86 octane gasoline in South Dakota. MIC, SVIA and ROHVA oppose this proposal, which poses very serious concerns to our industry. Given the full range of potential adverse energy, environmental, safety, legal and marketplace impacts, using 85 octane in vehicles not designed for such use is ill-advised and should not be facilitated.

Motorcycles, ATVs and ROVs are designed and calibrated for the octane value recommended in the vehicle owner's manual. None of our manufacturer members recommend the use of Sub-Regular octane level fuel in their vehicles. Our manufacturers have not tested their vehicles for durability using fuel rated less than 87 octane, as 87 octane is supposed to be the worst case in the field, and therefore data on the consequences, particularly over the long term, of ATVs or motorcycles run with 85 octane fuel for an extended period of time are not available. Further our products are not certified or warranted for its use.

If a consumer uses gasoline with an octane level lower than that required, engine knocking may result. Engine knocking (abnormal engine combustion) creates both mechanical and thermal stresses on engine components and over time will lead to severe and expensive engine damage. While recent model year automobile engines are equipped with sensors that detect knocking and, through the engine's computer, retard the spark ignition timing to protect the engine hardware, many motorcycle and off-road vehicle engine management systems do not have knock feedback loop or if they do, are calibrated to function with a minimum octane rating of 87. Engine management systems are not designed to handle an octane rating this low. Therefore detonation is likely which is highly damaging, particularly to engine pistons and rings. Motorcycles, ATVs, and ROVs without knock sensors will be even more vulnerable to engine damage.

In short, the vehicle is calibrated to run optimally for all performance characteristics on the fuel octane rating specified in the vehicle owner's manual. Most importantly, marketplace fuels must be compatible with the vehicles and products that will use them.

1235 South Clark Street, Suite 600, Arlington, VA 22202 PH: (703) 416-0444 FAX: (703) 416-2269

Motor vehicles, motorcycles, ATVs, boats, lawnmowers, and other consumer products are designed for octane levels no less than 87. In addition to the serious concerns regarding engine damage from 85 octane, use of 85 octane in motorcycles, ATVs and ROVs on 85 octane may, especially over the long term, adversely impact vehicle performance as engine overheating and stalling is likely, especially with older carbureted engines as well as those with limited automatically adjustable fuel injection. In addition to the safety issues associated with engine stalling, vehicle fuel economy will be negatively impacted and higher exhaust emissions can be expected.

Even in vehicles that do have knock sensors which, at least temporarily, adjust calibrations to prevent knock when sub-octane fuel is used, it is unclear whether these systems will prevent longer term problems and unknown what impacts these systems have on emissions and fuel economy if continuously activated to de-rate the engine.

Consumers need to know which fuel is appropriate for their vehicle and meets manufacturer warranty requirements. With the number of fuels proliferating at the nation's pumps (various octane and oxygenate combinations), pumps will need to have clear, easy read labels to identify all the different fuel choices. However, even with labeling requirements, it is a given that misfueling will occur in spite of any pump labeling scheme - either due to confusion about which fuel meets their needs or especially because many consumer purchases are driven by price. If, presumably, 85 octane is cheaper, the consumer well may select an inappropriate fuel, as the fuel buyer typically will opt to purchase the lower priced product. Over time, this practice will cause serious costly problems for consumers. The better approach to protect the consumer is to avoid introducing these fuels into the market in the first place.

We urge you to continue to follow the octane guidance in ASTM D4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel." Throughout Appendix item X1.6 "Effects of Altitude and Weather on Vehicle Antiknock Requirement," the specification states altitude de-rating of octane (below 87 Pump Octane) is an outdated practice used predominantly for pre-1984, non-computer adaptive vehicle technologies. Today, altitude de-rating of octane should not occur in any U.S. region. D4814 discusses the applicability of sub-octane fuels for older vehicles. No part of South Dakota is in the high altitude Rocky Mountain region where the sub-octane fuels may apply. Moreover, there is the practical problem of offering consumers at high altitudes the low octane fuel when their vehicles may travel to low altitude locations where they will experience lower performance and potential engine damage.

It is difficult to understand the basis or justification for this proposal other than to identify the extent of illegal activity and provide a questionable remedy. In this regard, we don't believe allowing the practice to go forward simply by providing a consumer information label is an acceptable solution nor is it good governance.

We note that Wyoming and Montana refineries supply the terminal serving western South Dakota yet the sub-octane labeling violations were occurring in the eastern part of the state. Also we are unable to understand the presumed concerns evidenced by petroleum marketers of possible shortages of gasoline supply. Proponents are using the threats of fuel shortages and higher prices to support adoption of the proposed rule to allow 85 octane, rather than making a data-driven, science based case to support a change to allow 85 octane. By advocating this rule, they are circumventing the ASTM process.

There is nothing to suggest that there will be a shortage of gasoline anywhere in the country in either the short or long term. Oil is plentiful in the Americas and elsewhere and there is accessible refining capacity as noted in Montana and Wyoming as well as in North Dakota, Minnesota, Illinois and Kansas, among others. In addition, there are various pipeline initiatives planned and upon completion, the proposed Hyperion refinery project in Union County in southeast South Dakota will serve the interests of the state well. In view of the foregoing, it is our belief that maintaining the current regulations will in no way result in a fuel shortage. Experience shows the market quickly adapts, even in cases of unplanned refinery outages due to natural disasters, fires, or other catastrophic events.

Given the full range of potential adverse energy, environmental, safety, legal and marketplace impacts, using 85 octane in vehicles not designed for such use is ill-advised and its sale should not be allowed. We therefore oppose the proposed rule to permit the sale of 85 octane in South Dakota.

Thank you for your consideration of these comments.

Respectfully submitted:

Kathy R. Van Kleeck
Sr. Vice President, Government Relations

Pfahler, David

From: [redacted]
Sent: Friday, July 20, 2012 1:4S PM
To: DPS Weights Measures
Cc: [redacted]
Subject: comments on 8S octane
Attachments: 8S octane fuel in South DakotaJPG

Importance: High

Good afternoon,

Attached is the photo of gasoline automotive engine piston and spark plug after using 85 octane fuel in South Dakota east of 103 degrees longitude.

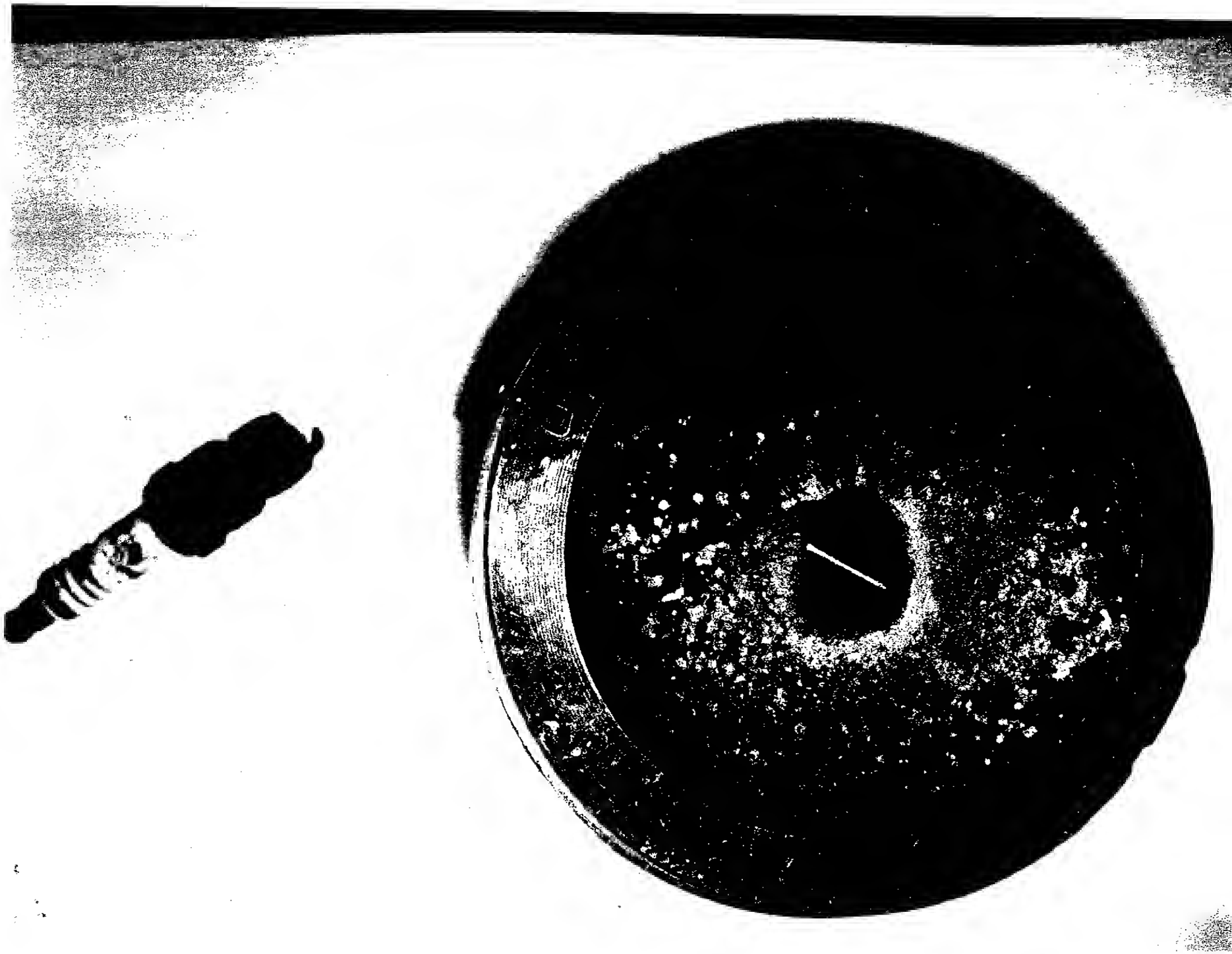
I would strongly suggest that you do not approved the use of 8S octane in South Dakota with a elevation of less than 3000 feet above sea level .

If you have any questions, please contact me at 60 295 1221

Sincerely yours,

Steve Wegman
[redacted]
Pierre, SD S701

60S 29S 1221



Pfahler, David

From: [redacted]
Sent: Friday, July 20, 2012 8:23 AM
To: Pfahler, David
Subject: Honda's 85 Octane Position
Attachments: Honda's 85 Octane Position.pdf

Mr. Pfahler,

Attached please find Honda's comments on the proposed regulation that would legalize the sale of 8S octane fuel in South Dakota, signed by our principal chemist Jeff Jetter. Please let me know if you have any questions or if this information needs to be distributed to anyone else as well.

Thank you for all of your help on this issue, it has been greatly appreciated as this is my first time working on a regulatory issue in your state.

Craig Orlan
State Relations Analyst
Honda North America, Inc.

(See attached file: Honda's 8S Octane Position.pdf)

HONDA

Honda North America, Inc.
1001 G. Street, N.W. Suite 950
Washington, DC 20001
Phone (202) 661-4400

July 19, 2012

David L. Pfahler, Director
Inspections/Weights & Measures Programs
South Dakota DPS
118 West Capitol Avenue
Pierre, SD 57501

Sent Electronically to: David.Pfahler@state.sd.us

Re: Opposition to the legalization of 85 octane fuel in South Dakota

Dear Mr. Pfahler:

Thank you for the opportunity to publicly comment on the proposed regulations that would legalize the sale of 85 octane fuel in South Dakota. Honda has 47 authorized dealerships statewide that employ 589 people, and strives to produce products of the highest quality for our customers. We have numerous concerns about this proposed regulation, many of which we have already expressed in previous communications, both individually and as a member of the Association of Global Automakers.

We concur with other engine and vehicle manufacturers that South Dakota should adhere to and strictly enforce the ASTM D4814 Standard Specification for Automotive Spark-Ignition Engine Fuel. These standards were developed and approved by members of the auto and oil industries to ensure product quality for consumers, and Honda designs and builds its products with these standards in mind. The ASTM committee is planning on updating the language on octane rating at its next meeting, and we would encourage South Dakota to wait to hear what the committee determines before making a permanent decision on the legality of sub-octane fuel.

While we understand Governor Daugaard's desire to avoid a potential fuel shortage and provide ways for consumers to combat high gas prices[1], the long-term legalization of 85 octane fuel is not the answer. The continued, long term use of substandard fuel can adversely affect engine cylinders, pistons, and piston rings. This damage can result in the loss of engine power, increased oil consumption, and reduced engine life over time. Small engines, like those found in Honda power equipment, that do not have knock sensors are even more susceptible to this damage because they cannot adjust their spark timing. These problems are not immediately detectable to consumers but are extremely costly in terms of lower

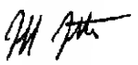
[1] http://news.sd.gov/newsitem.aspx?id=13125

fuel efficiency, higher maintenance costs and the need for premature engine or equipment replacement.

We applaud the Governor's intent to protect consumers by requiring a warning label where 85 octane fuel is sold, but do not believe that those labels provide consumers with enough information to make an informed decision at the pump. The proposed labels do not adequately convey to consumers the potential long term damage to their engines and the costs associated with that damage. Without that information clearly spelled out, it is impossible for consumers to make an informed decision evaluating the short term savings at the pump with the potential long term damage to their engines. It is Honda's position that a thorough cost analysis clearly shows that these long term risks are not worth moderate, short term savings.

Thank you for the opportunity to share our concerns on this proposed regulation. I welcome the opportunity to discuss this with you further and can be contacted at 310-781-5754 or by e-mail at jjetter@hra.com.

Sincerely,



Jeff Jetter
Principal Chemist
Honda R&D Americas, Inc.
1900 Harpers Way, Torrance, CA 90501

HYUNDAI
MOTOR GROUP

Hyundai America Technical Center, Inc.
6800 Geddes Rd - Superior Township, MI - 48198
Phone: (734)337-9499 FAX: (734)337-3168
www.hatci.com

July 20, 2012

David L. Pfahler, Director
Inspections/Weights & Measures Programs
South Dakota Department of Public Safety
118 West Capitol Avenue
Pierre, SD 57501

Re: Comments on the Proposed Administrative Rule Language Allowing Sale of 85 Octane Throughout South Dakota

Dear Mr. Pfahler:

I am writing to you on behalf of the Hyundai America Technical Center, Inc. (HATCI). We are providing comments on the proposed rule language which would allow for the sale of 85 octane commercial gasoline in South Dakota. We believe that lower octane levels will result in long term deterioration of engine components and increased costs to consumers. We appreciate your consideration of our comments.

To improve fuel efficiency, the auto industry has been moving towards technology that benefits from higher octane fuel, such as boosted engines. Automakers design their engines so that they are optimized for a specified octane level (compression ratios and spark maps, engine components and catalyst materials are selected and optimized based on the fuel octane specification). Lower octane fuels cause the engine to operate outside of optimized conditions. To adjust for lower octane fuels, spark retard is employed by the knock prevention system and the immediate result is a loss of fuel economy and engine performance. Spark retard causes combustion gases to be exhausted at higher temperatures stressing all components downstream (exhaust valves, catalytic converter, turbine and exhaust sensors) which will experience long term deterioration due to thermal stress.

The difference between 87 octane and 85 octane is significant because the negative effects are not linear. While the State has noted that there have not been any reported issues with the use of 85 octane fuel and this is not unexpected. It is long term deterioration that we expect to occur with the use of reduced octane fuel. Furthermore, the long term compromise of the engine might not be evident until after the warranty period. Owners could then be left with vehicles that experience power losses, excessive oil consumption and reduced engine life in addition to increased fuel consumption outside the warranty coverage period.

Finally, the emissions performance of vehicles will also degrade with long term use of 85 octane gasoline because the catalyst will be degraded from high thermal temperatures. It is very important to note that all of the effects from the degradation, not only to the catalyst, but to the engine and all of the components mentioned earlier in this letter, are irreversible.

In summary, HATCI shares the same concerns as those expressed by our trade association, Global Automakers, as well as other auto companies and engine manufacturers, on this issue. We understand that there were supply issues which resulted in an emergency rule being put in place allowing for lower octane fuel. However, we believe that if a permanent rule is put in place allowing for the use of 85 octane fuel, vehicle owners will be negatively impacted in the long term. As a result, we ask that the department reject the rule to extend lower octane in South Dakota on a permanent basis. Thank you for considering our comments. If you have any questions, please contact Amy Lilly at 734-337-2331 or alilly@hatci.com.

Sincerely,

John Juriga
Director of Powertrain
734-337-2349

Global Automakers
South Dakota Octane Hearing
July 20, 2012

- Good morning. I am John Cabaniss, Director, Environment & Energy, for the Association of Global Automakers.

- Global Automakers represents international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. Our members include 14 Asian and European based automakers, including for example Honda, Nissan, Toyota, Hyundai, Kia, and Subaru. Our members comprise about 40 percent of the vehicles sold in the U.S. One of our associate members is the Recreational Vehicle Industry Association. Global Automakers works with industry leaders, legislators, regulators, and other stakeholders throughout the United States to improve vehicle safety, encourage technological innovation, reduce emissions, and improve fuel economy.

- In looking at this octane issue, we have consulted our colleagues throughout the auto and engine manufacturers, including the Auto Alliance, the Engine & Truck Manufacturers Association, the Motorcycle Industry Council, the Recreational Off-Highway Vehicle Association, the Specialty Vehicle Institute of America, the Outdoor Power Equipment Institute, the National Marine Manufacturers Association. The DPS has already received comments from all of these auto and engine related groups, supporting the continuation of the minimum ASTM specification of 87 octane (AKI) for the entire state. Global Automakers also supports this position as well as our members, including the Recreational Vehicle Industry Association. There is a clear consensus among all vehicle and engine makers on this matter.

- Automakers rely on the availability of gasoline meeting ASTM requirements to ensure the proper long-term operation of vehicles and engines. This 87 octane requirement is needed to ensure that consumers in the state get the appropriate gasoline for their vehicles to protect the significant investments that they make in vehicles and other gasoline powered equipment.

- Every automaker recommends gasoline with a minimum of 87 octane AKI for all vehicles regardless of where they are driven. These recommendations are included in every owner's manual. Honda's recommendation and warnings are typical. It reads as follows:

  > "Fuel Recommendation – Unleaded gasoline, pump label 87 octane or higher
  >
  > Use of a lower octane gasoline can cause a persistent, heavy metallic knocking noise that can lead to engine damage."

  For some high performance engines, Honda and other manufacturers recommend even higher octane levels.

- Because vehicles are complex products, automakers have worked with suppliers and other stakeholders to develop broad based standards for all aspects of vehicles. For instance, the auto and allied industries have over 700 committees with over 10,000 volunteers within the Society of Automotive Engineers to review, update, and establish new standards governing designs of all automotive systems from steering to brakes to powertrains to air conditioning. There are standards for all automotive fluids, including fuels, lubricants, brake fluid, etc.

- Gasoline quality standards are critically important for automakers and consumers to ensure proper performance, driveability, durability, low emissions, and optimal fuel economy. Therefore, the auto and oil industries have had a longstanding ASTM committee established in 1904 to focus on fuel quality standards so that automakers can be confident that the gasoline available to customers is compatible with the design of vehicles. These specifications are contained in ASTM document D-4814 and cover a range of properties, including volatility, octane ratings, distillation, corrosion, gum content, sulfur, and oxidation stability.

- The committee meets twice a year in June and December. The committee has a current membership of about 1S00 professionals and experts and has jurisdiction of over S80 standards, published in five volumes of the Annual Book of ASTM Standards.

- Automotive standards are not whimsically established. All automotive standards are developed though a data-driven, collaborative, consensus process, with extensive deliberation, rigorous testing, analyses, and peer review. Much of the engine/fuel research is done through a separate automotive and oil industry collaborative called the Coordinating Research Council.

- As others have noted, proper gasoline octane rating is important to ensure proper combustion of the fuel in the engine. Sub-octane gasoline can cause detonation or pre-ignition of the fuel, which is commonly called engine knock. Sustained detonation can cause engine damage. Modern engines provide some protection by the use of knock sensors. When the vehicle computer senses detonation conditions, the ignition timing of the engine is retarded to reduce or prevent knock. Retarded ignition timing results in higher vehicle emissions, lower fuel economy, and reduced performance.

- The more serious ill effects of using sub-standard gasoline (similar to the situation when sub-standard lubricants are used) are longer term, cumulative and irreversible. Using sub-standard gasoline will result eventually in excessive wear and tear on pistons, piston rings, and cylinders leading to loss of power, excessive oil consumption, and reduced engine life. These problems occur well after engines are out of warranty and result in higher maintenance costs for consumers or the extra cost of pre-mature replacement of engines or equipment.

- In light of the controversy here in South Dakota, at its June 2012 meeting, the ASTM committee decided to take a new look at octane specifications. A work group has been formed and is beginning its review. As I mentioned before, we support the continuation of the ASTM 87

octane specification for the entire state of South Dakota; however, if DPS decides to continue consideration of allowing sub-octane gasoline, you should wait for the recommendations of the ASTM committee's review of the issue before making any final decisions. Even during the emergency period, it is absolutely necessary to have the strongest possible pump labeling language prominently displayed on pumps to caution consumers. Unfortunately, many consumers do not heed pump warning labels and often base gasoline purchases almost exclusively on pump prices.

- In summary, South Dakota should maintain its current regulations that rely on ASTM specifications.
    - Today's vehicles need 87 octane gasoline or higher.
    - Starting in the 2012 model year new technologies are being introduced to meet new EPA greenhouse gas emissions standards and new DOT fuel economy standards. Many of these technologies are more sensitive to octane levels. South Dakota consumers will not get the benefits of these standards unless the fuel sold is on-spec (i.e., 87 octane or higher).
    - There is no reason to believe that maintaining the current regulations will have a negative effect on fuel supplies in South Dakota.
    - There is nothing to prevent current suppliers from producing on-spec fuels for South Dakota.
    - There are multiple suppliers that can provide fuel to South Dakota under any circumstances.
    - Past experience with unplanned refinery outages or supply disruptions due to severe weather events (such as hurricanes) have not led to serious supply outages.

- Thank you. I would be glad to answer any questions.

Jacobson, Lori

From: CO-Gettysburg, Jason Schwab [redacted]
Sent: Friday, July 20, 2012 6:01 PM
To: DPS Weights Measures
Subject: Comment on 8S octane gasoline

I would like to comment on the 8S octane gasoline issue we are having in the state. It is my understanding that petroleum marketers are raising concerns over fuel shortages in 5D if they aren't allowed to sell 8S octane gas. My solution is simple. Allow 85 octane gas to be sold, but it ***MUST*** be blended with 10% ethanol to bring the octane level to 87. That would alleviate the issues with it being "sub-octane" gas: consumer issues with poor engine performance and manufacturer issues, and it would comply with current state laws. The blend 87oxy (85 octane blended with 10% ethanol) is what is sold as regular unleaded gas in Minnesota. The end result would be 87 octane (w/10% ethanol) and 89 octane (w/10% ethanol), just like MN.

What about the people who don't want to buy ethanol blended gasoline? 5ince it is not mandated (like it is in MN), some stations still can chose to sell 87 octane that does NOT contain ethanol, and some can sell 87 octane with ethanol. It will be an opportunity for some stations to differentiate themselves from their competitors. In MN, the only gas that is allowed to be sold that does not contain ethanol is 91 octane premium. 5ome stations have it, some stations carry *ethonol* blended 91 oxy premium. In 5D it would basically work the same, only with regular. I know this because I used to drive gas transport when I lived in MN.

This can be a win-win for everyone. A win for corn farmers, ethanol plants, petroleum marketers, gas station owners, and consumers.

I hope my thoughts help.

Sincerely,

Joson Schwob
[redacted]
[redacted] | Gettysbur[redacted], SD S7442
[redacted]
[redacted] Visit us at nothernplainscoop.com

South Dakota Corn Growers Association
4712 S. Technopolis Drive
Sioux Falls, SD 57106

RE: 85 Octane Comments

David Pfahler, director
Office of Weights and Measures
118 W. Capitol Ave.
Pierre, S.D., 57501

July 20, 2012

Dear Director Pfahler,

I come here today with concerns over the sale of 85-octane gasoline across the state of South Dakota. I understand that 85-octane has been sold for years in the far western areas of the state, but the recent mislabeling issues and far-spreading sales of the low-grade fuel are indeed troubling.

First and foremost, we believe consumers need to know exactly what they are buying when choosing their fuel in South Dakota. Consumers need to be clearly informed about the product they are purchasing and the consequences that could follow if they were to select a low-octane fuel, which may not be approved by their auto warranty or recommended by their manufacturer.

85-octane gasoline is 100% illegal according to South Dakota law. Attempting to spin the fact that it has been used and mislabeled for years does nothing to benefit consumers, but instead protects oil company interests. The sale of 85-octane fuel should occur only when there is a supply emergency and not become a regular option in South Dakota.

To that I ask two questions: Is the current octane situation a matter of emergency or convenience for the state's gasoline suppliers? Is providing a lower-grade fuel perhaps more profitable for the suppliers? Please use caution moving forward as allowing 85-octane as a regular blend could end up setting a dangerous precedent for not only South Dakotans, but consumers in other states as well.

South Dakota should be proud that it produces an affordable and abundant alternative to illegal, low-octane gasoline with corn ethanol. In fact our state produces around 1 billion gallons of the renewable fuel each year. Our farmers grow the corn, hard-working and technically educated workers produce the ethanol and small businesses sell the biofuel right here in our great state.

As successful as ethanol has been, it continues to deal with its share of consumer

perception issues that have been troublesome for the industry. Now as oil companies continue blending 10% ethanol with 82-octane fuel to reach an 85-octane blend, another entire set of negative connotations could emerge if consumers were to experience engine failure and associate the trouble with ethanol.

We are fortunate that a partial solution to this problem is in waiting right around the corner with the Environmental Protection Agency's recent approval of E15 (a blend of 15% ethanol and 85% gasoline) for cars and light trucks 2001 and newer. If implemented across the state, this blend could significantly lessen our dependence on low-octane fuel, providing a legal, higher-performing and cleaner-burning option to consumers, especially if we are truly faced with a gasoline shortage.

Thank you for your time and consideration.

Sincerely,

Gary Duffy

Gary Duffy

Jacobson, Lori

From: Rodney Gutzler [redacted]
Sent: Monday, July 23, 2012 1:18 AM
To: DPS Weights Measures
Subject: Low octane fuel causes problems for small, fuel efficient cars.

Gas with octane of less than 87% will not only cause problems for small sub compact cars but can actually damage them. I own a Scion IQ with has an EPA rating of 36 city 37 highway. My mileage drops from 35 to 25 mpg when I use gas from pumps that say they are 87 octane but are actually 85 octane pumps. I live in Sioux Falls so I know we are getting 85 octane gas. I suggest spot inspections of gas at the BP station at 33rd and Minnesota Avenue in Sioux Falls. I am suspect that their 87 octane pumps actually have 85 octane or less. My mileage was running 25 mpg but when I switched to the 89 octane 10% ethanol blend pumps my mileage jumped to 35 mpg.

Low octane gas not only effects older cars but also has a severe impact on the new fuel efficient 4 cylinder engine cars.

Rodney Gutzler
[redacted]
Sioux Falls, S.D. 57105
[redacted]

Jacobson, Lori

From: Foster, John
Sent: Monday, July 23, 2012 9:17 AM
To: DPS Weights Measures
Subject: 85 octane gas comments

If it is determined that any these people (station operators or distributors) knowingly misrepresented 85 octane as 87 octane, then they should **not** be let off the hook and fined big-time.....

John Foster

LYNN'S, INC.
DAKOTAMART, INC.

CORPORATE OFFICE
3435 West Main
Rapid City, SD 57702
Phone: (605) 388-8948
Fax: (605) 388-9193

ACCOUNTING OFFICE
402 First Avenue West, P.O. Box 630
Lemmon, SD 57638
Phone: (605) 374-5545
Fax: (605) 374-3395

LYNN'S, INC.
dba LYNN'S OAKOTAMART
Prairie Oasis Mall
P.O. Box 99
Faith, SD 57626
Phone: (605) 967-2622
Fax: (605) 967-2621

LYNN'S DISCOUNT FOODS, INC.
dba LYNN'S OAKOTAMART
1111 Lazelle Street
Sturgis, SD 57785
Phone: (605) 347-4463
Fax: (605) 347-4485

LYNN'S CROW CREEK TRADING POST, INC.
dba LYNN'S OAKOTAMART
Highways 34 & 47, P.O. Box 229
Fort Thompson, SD 57339
Phone: (605) 245-2292
Fax: (605) 245-2521

BDL ENTERPRISES, INC.
dba LYNN'S DAKOTAMART
Twin City Shopping Mall
145 Glendale Drive
Lead, SD 57754
Phone: (605) 584-2905
Fax: (605) 584-1899

OAKOTAMART, INC.
dba LYNN'S DAKOTAMART
120 W. Sioux Ave., P.O. Box 1158
Pierre, SD 57501
Phone: (605) 224-6671
Fax: (605) 224-5670

OAKOTAMART, INC.
dba LYNN'S OAKOTAMART
800 Mt. Ruahmore Road
Custer, SD 57730
Phone: (605) 673-4463
Fax: (605) 673-4863

DAKOTAMART, INC.
dba LYNN'S OAKOTAMART
600 National Street
Belle Fourche, SD 57717
Phone: (605) 892-4330
Fax: (605) 892-4018

OAKOTAMART, INC.
dba LYNN'S OAKOTAMART
505 South 6th Street
Hot Springs, SD 57747
Phone: (605) 745-3203
Fax: (605) 745-3241

OAKOTAMART, INC.
dba LYNN'S OAKOTAMART
106 Main Street, P.O. Box 920
Martin, SD 57551
Phone: (605) 665-6446
Fax: (605) 665-6003

BDL ENTERPRISES, INC.
3435 West Main
Rapid City, SD 57702
Phone: (605) 388-8948

DTJ, L.L.C.
3435 West Main
Rapid City, SD 57702
Phone: (605) 366-6946

KEY CITY SHOPPING CENTER LTD. PARTNERSHIP
Georgia's, Inc., General Partner
3435 West Main
Rapid City, SD 57702
Phone: (605) 388-8946

VIDEO ADVENTURE, INC.
3435 West Main
Rapid City, SD 57709
Phone: (605) 366-9193

EAGLE STOP, INC.
Highway 212, P.O. Box 2090
Eagle Butte, SD 57625
Phone: (605) 964-8146

JTD PROPERTIES, L.L.C.
P.O. Box 630
Lemmon, SD 57638
Phone: (605) 374-5545

STURGIS EVENTS, L.L.C
3435 West Main
Rapid City, SD 57702
Phone: (605) 366-9193

July 26, 2012

RECEIVED
JUL 30 2012
SOUTH DAKOTA DEPT
OF PUBLIC SAFETY

Dave Phahler
SD Department of Public Safety
Weights and Measurements
118 West Capitol Avenue
Pierre, SD 57501

RE: Geographic Boundaries

Dear Mr. Pfahler:

I'm writing with our concerns of proposed administration rules limiting the sale of "85 Octane" gas east of Wall.

First, when did geographical boundaries determine pricing in the free market system? Let the consumer choose which octane fuel they want through properly labeled pumps.

Second, this past spring, if unable to sell "85 Octane", the price difference was 38 cents higher if we would have been forced to pull from the east for our Eagle Butte and Martin locations. This puts us at a tremendous pricing disadvantage to our neighbors to the west.

Third, I don't think the citizens of Martin and Eagle Butte should be forced to pay higher prices when they are accustomed to already using "85 Octane".

Please don't let an imaginary lines dictate the price of gas.

Sincerely,

Donald P. Feist
Lynn's Dakotamart Inc./Eagle Stop, Inc.

HOWES
OIL COMPANY

Office of Weights & Measures
118 West Capitol Avenue, Pierre SD, 57501

July 25th, 2012

In addition to my participation in the Department of Public Safety's July 20th public hearing on sub-octane gasoline, the following comments are meant to supplement my verbal testimony:

- We take the refiners and pipeline operators who service the Rapid City terminal at their word that sub-octane product is the only available option for a steady supply of gasoline at that terminal. Due to existing shortages at the State's other pipeline terminals, any further disruption in supply at Plains Rocky Mountain would certainly lead to increased outages statewide. The ripple effect of petroleum carriers being forced to travel further East for gasoline would only exacerbate our ongoing problems with supply. The State of South Dakota unfortunately is hamstrung to restrict sub-octane gasoline sales statewide.
- Giving this reality, we support the State taking any one of the following three positions:
  1) Allow sub-octane sales only to the West of the 102nd meridian, with no cautionary labeling required.
  2) Allow sub-octane sales statewide, with cautionary labeling required on all pumps dispensing products lower than 85 octane.
  3) Allow sub-octane sales statewide, with cautionary labeling required on only those pumps located to the East of the 102nd meridian.
- Because vehicles are no longer manufactured for use with 85 octane gasoline, we propose the following language for warning labels:
  "Warning – 85 Octane Gasoline Is Not Recommended For Use in Any Vehicle Manufactured After 1980."
- We strongly believe warning labels should not be written to advise motorists to consult their owner's manual, since no vehicles are currently engineered to run on sub-octane product. Based on testimony received July 20th by representatives of every auto manufacturer operating in America today, it is now a matter of public record that vehicles are not built to be run on 85 octane gas. Consequently, cautionary labeling should reflect the real concern (that sub-octane product is not intended for use in any modern vehicle.)

I want to thank the State of South Dakota, specifically Jenna Howell, Dave Pfahler, and Jason Glodt for their efforts to help address the issue of sub-octane gasoline. This process has worked well, in our opinion, and has been very open & informative. We do feel though that the names and locations of any retailers who are in violation of properly labeling the octane rating of their gasoline pumps should be immediately released (now and in the future.) This will help to differentiate the folks who are following the law from those who are willingly ignoring it.

If you have any questions about my testimony, please don't hesitate to call or write.

Thank you,

Andy Howes
Howes Oil Company
605-575-9602/ahowes@howesoil.com

F 9644

Governor of South Dakota

From: theinz@heinzcorps.com
Sent: Friday, July 27, 2012 5:04 PM
To: Governor of South Dakota
Subject: Continuing sale of 85 octane gasoline sales in South Dakota

GOV
Gladt > Fyi
7/30 Ke

Name: Tom Heinz
Address: [redacted]
City: Dakota Dunes SD 57049
Email Address: [redacted]
Home Phone: [redacted]
Work Phone: [redacted]
Cell Phone: [redacted]
Response Requested: [redacted]
Message Description: Continuing sale of 85 octane gasoline sales in South Dakota

Message Content:
As suggested, I've emailed ALL members of the Rules Review Committee encouraging their yes vote on continuing the sale of 85 octane gasoline in South Dakota. As owner of a Sinclair retail gasoline and diesel outlet at the Jct. of US 385 & SD 79 Hot Springs, SD and near the Wyoming border where 85 octane gasoline is marketed, I assure you gasoline and diesel fuel Sinclair Oil provides is vital. We are the only store at the Maverick Jct. and are open 24 Hrs. 365 days a year. We employee approximarely 15 full time employees and are planning a major expansion[$1 to $1.5 million] in 2014. Our location provides the traveling public essential services and safe place to stop in a remote area of South Dakota. Again, I ask you also to encourage the Rules Review Committee to vote yes to continue the sale of 85 octane gasoline in South Dakota. Thank you. Tom Heinz, President Heinz, Inc. Dakota Dunes, SD 57049

Jacobson, Lori

From: Jeffrey Patterson[redacted]
Sent: Friday, July 27, 2012 11:31 PM
To: DPS Weights Measures
Subject: South Dakota gasoline octane requirments

Gentlemen,

We would kindly ask that you consider some of the following thoughts in your decision concerning the octane minimum requirements per demographics in South Dakota.

We have been in the petroleum business in Kadoka for over 33 years.

We have transported most of our own gasoline and diesel. We have purchased petroleum from Newcastle WY to Sioux Falls SD. We have always posted our minimum octane rating on the pump. Whereby our customers knew the minimum octane in the tank; the customer could make his own decision whether he wanted to purchase gasoline with lower octane which was posted. It is doubtful that 1% of the people ever mention anything about octane. As long as the vehicle runs fine no one cares about an octane rating. A huge amount of our purchased gasoline originates out of the Rapid City terminal, which for years and years has had lower octane ratings. In over 33 years of business I cannot remember any customer calling to complain about their car running badly. There for the thoughts of the lower octane rating gasoline purchased out of Rapid City has never been a problem.

It behoves me to think that South Dakota would even consider a thought of drawing a geographical line and mandate a law saying if you have a station in Kadoka you cannot purchase gasoline out of Rapid City, 90 miles away; therefore forcing us to go to Mitchell, Wolsey, and Sioux Falls to purchase our gasoline

Forcing us to purchase gasoline from so far away costs us twice the freight, which naturally forces our cost up making us uncompetitive.

Most people know for a convenience store to make it gasoline is not a high profit item, but defiantly the inside store sales make up the majority of profit. If our gasoline sales drop then naturally our inside sales drop dramatically, hurting our business as well as the sales tax revenue per city and state.

The smaller populated cities such as Kadoka already have trouble employing our younger people. Mandating Kadoka to use 87% octane will definitely hurt our business which in turn reduces our work force; resulting in hurting Kadoka's job availability and Kadoka's sales tax revenue as well as South Dakota's sales tax revenue.

When has South Dakota enacted laws dividing South Dakota into territories? What is good for one part of South Dakota is good for the whole state. We don't have a different state gas tax rate in South Dakota because some of our roads are traveled less.

South Dakota video gaming profits is 50 % throughout the state.

Petroleum stations in South Dakota constantly worry about gasoline and diesel availability and some of the fuel suppliers have already stated they will probably quit supplying gasoline to Rapid City if they lose much more business.

Please do the right thing and leave the law the same and allow the customer to decide if they elect to use 85 or 87% octane.

Sincerely,

Kadoka Gas and Go Inc.

Grant Patterson[redacted]

TELEPHONE COMMENT ON 85 OCTANE ISSUE

From: Rod Anderson
Yankton 5D

I don't think 85 Octane should be allowed anywhere in the state. It is a substandard fuel, and even when you boost it up with ethanol, you still started with a substandard fuel and you end up with a substandard product.

Any problems arising from using those fuels are then blamed on the ethanol industry and not the substandard fuel.

I realize there is a problem in the western part of the state, but it needs to be dealt with sometime and this is as good a time as any. The governor needs to leave the law the way it is and enforce it.

--per telephone conversation 7/30/2012, 1:15p.m. with Lynn Bixler

american coalition for
ethanol

July 30, 2012

Via Electronic Moil: DPSWM@state.sd.us

David Pfahler, Director
Inspections/ Weights & Measures Programs
South Dakota Department of Public 5afety
118 West Capitol Ave.
Pierre, SD 57501

Re: Opposition to Proposed Rule Allowing 5ale of 85 Octane Throughout 5outh Dakota

Mr. Pfahler:

The American Coalition for Ethanol thanks you for this opportunity to offer comments in opposition to the proposed administrative rule allowing the sale of 85 octane gasoline throughout South Dakota

First, we feel it is important to state very clearly what we are talking about today. 85-octane gasoline has traditionally been a straight unleaded gasoline that has an octane rating of 85 – two points lower than engine manufacturers require for every engine used in the United 5tates – which has been allowed to be sold in higher elevations. If ethanol were added to that fuel, it would be 88 octane, which is perfectly acceptable in all engines. Recently, however, the 85 octane fuel sold in those markets has been an 81.5 octane gasoline with ethanol added to bring it up to 85. The octane of this fuel is as different from the 89 octane E10 usually found in the Eastern two thirds of the state as regular Is from premium.

Because there has been some confusion, we want to make it clear that this rule does not affect E85 (which is up to 85% ethanol), nor does the rule apply to E15 (which has 85% gasoline).

5econd, while this rulemaking has become a discussion about gasoline supplies, we should be clear that there was no gasoline supply shortage in eastern 5outh Dakota this winter and spring, when retallers in Eastern 5outh Dakota markets were approached by a fuel suppliers who offered to deliver gasoline to those stations at prices ten cents (or more) below the 5ioux Falls low rack price. The proliferation of 85-octane fuel in eastern 5outh Dakota this winter and spring was clearly based on price – not supply - and was an opportunistic attempt to make more money on many different levels.

Furthermore, those who sold 85 octane gasoline in eastern 5outh Dakota knew that what they were doing was at very least dishonest, and in fact, illegal, as evidenced by the fact that they sold and identified the fuel as 87 octane unleaded gasoline, and in some cases, 89 octane E10. Stations that "played by the rules" and struggled to compete wlth this substandard gasoline, as well as consumers who were defrauded by getting 85 octane gas instead of the higher octane fuel they paid for, should not be further slapped in the face by the State's apparent unwillingness to punish those who have clearly

5000 S. Broadband Lane ★ Suite 224 ★ Sioux Falls, SD 57108
Ph | 605.334.3381 ★ Fx | 605.334.3389 ★ www.ethanol.org

violated the law. To the contrary, the State is adding further affront to those who obeyed the law, by going to great lengths to make 8S octane gasoline the "standard" gasoline in the state. Regardless of what is decided in this matter, if the state refuses to enforce the laws to protect consumers and enforce a fair marketplace – if Weights and Measures does not want to punish those who put their thumb on the scale or use a two foot yard stick – rule breakers will be encouraged to violate whatever rules exist following this discussion.

The basic reason the American Coalition for Ethanol is opposed to making 8S-octane the legal minimum fuel for the entire state of South Dakota, is that this change would be a step backward in fuel quality, and is counter to what the ethanol industry is helping our State and Nation achieve. Ethanol is clean, high-octane, domestically produced fuel that improves energy security and improves our state's and nation's economy. 8S-octane gasoline is low-quality and low-octane, and according to every engine manufacturer, 8S octane gasoline will cause engines to run less efficiently, and increase emissions. And while much of the fuel that was the impetus for this rule is refined in the United States, and while we have little reason to question the security of Canadian crude oil, the fact is, we - South Dakota – do not produce or refine oil.

One of ethanol's main values is its high octane, and we will oppose any effort to devalue octane in fuel, because doing so reduces the value of ethanol. The message sent by an "ethanol state" like South Dakota allowing the use of lower octane fuel will be used by refiners and ethanol opponents across the country as precedent that "proves" octane is not important.

If 8S octane is allowed in the entire state of South Dakota, rather than transporting fuel across the state, refiners could profit by offering a similar low grade gasoline in other South Dakota terminals by saying they need to do so to remain competitive. Oil companies have shown that they will "build" fuel to meet the lowest possible specification. Much like Rocky Mountain refiners have done by lowering base fuel octane to 81.S, as E10 has become the dominant fuel nationwide, oil companies have stopped offering 87 octane gasoline in most markets, and now supply only an 84 octane base fuel nationwide, which must then be "blended up" to 87 with ethanol. The lower octane a refinery can produce, the greater yield they can get from a barrel of crude oil. Refiners maximize their profits by producing as much fuel as possible at the minimum acceptable standard. There is nothing wrong with that – it is what oil companies are supposed to do.

Government, on the other hand, is supposed to set the minimum standards that those oil companies have to meet, so that people who spend tens of thousands of dollars on vehicles that are designed to run on 87 octane fuel can have the reasonable expectation that fuel will be available in the marketplace. While there has been some suggestion that the state could require that refiners make an 87 octane fuel available, there would be no reason to believe oil companies would not do exactly what they are telling South Dakota they will do in the Rapid City market right now – make the economics of 87 octane so unattractive that consumers will be forced to use 8S octane fuel or pay confiscatory prices for the fuel that their cars, trucks, boats, motorcycles and small engines require.

Auto makers and small engine manufacturers say 8S octane fuel will reduce fuel economy, decrease engine power, lead to engine knock, reduce engine durability, and increase emissions. Engine manufacturers further question the validity of the thirty-year-old exception that allows refiners to sell 85 octane – even at higher altitudes – and say that problems caused by the fuel may not be covered under warranty.

The ethanol industry is also very concerned that when consumers experience poor engine performance, reduced fuel economy, and potential engine damage, ethanol will be mistakenly blamed, rather than the substandard gas used as a blendstock. Nationally, there has been no mention of the fact that the gasoline that is currently being used as a base fuel in the U.S. is several octane points lower than the gasoline consumers have purchased for years. When drivers experience lower mileage and performance problems, ethanol is automatically implicated. This promises to be worse with 8S octane gasoline in areas where it was never intended to be used. To borrow a phrase from recent testimony from the American Petroleum Institute's Jack Gerard, 8S-octane gasoline is "outside the range for which the vast majority of U.S. vehicles and engines have been designed and warranted."

Of course, Mr. Gerard was talking about E1S, which has endured more testing than any other fuel ever introduced into the marketplace, and which carries a warning label that is much more onerous than the one South Dakota is suggesting for 85-octane – and yet API believes the label is not frightening enough.

Ironically, to date, it does not appear that refiners are actually asking for the change the State is proposing. Comments and earlier correspondence with State officials seem to be focused on keeping 85 octane "legal" west of the 102nd meridian. That could be accomplished simply by making ASTM 4814 the official standard for South Dakota. While there is some debate as to whether that standard actually allows 8S octane fuel in Western South Dakota, the oil companies clearly believe that it does, and have based decades of supply decisions on that standard. Since oil companies, automakers, ethanol producers, engineers, scientists and others collaborate on ASTM standards, it would be difficult for any of those parties to argue with the fairness of a regulation that forces all to operate within those guidelines.

ACE is also encouraged to hear that the octane portion of that standard is under review by ASTM, and is comfortable with a South Dakota rule that references ASTM 4814 and changes with that standard, as opposed to a rule written by non-technical people in response to a temporary fuel supply or fuel price situation.

As mentioned earlier, there has been (in our opinion, intentional) confusion regarding the reason for this proposed rule. Since the state discovered that there were several stations offering substandard 8S-octane gas, mislabeled as 87 or 89 octane – the explanation most often offered by those who sold or supplied 8S octane fuel has been one of supply shortages. While we would prefer to see South Dakota set an example by using higher quality fuels, to be clear, ACE does not object to rules that would allow 8S-octane fuel to be used on an emergency basis. However, the effect of the proposed rule would not

do that. It would make the exception the rule. 8S octane would become the new minimum standard for South Dakota, regardless of availability of fuels that are currently allowed by law.

ACE understands that gasoline supplies are occasionally challenged in areas east of the 102nd meridian, and that there may be emergencies, from time to time. We believe there should be simple, well-defined rules that allow for substitutions so that consumers are not left without fuel. In the instance 8S-octane gasoline is allowed outside the area allowed by ASTM, it should be allowed only:

- In response to a demonstrated supply emergency only,
- In the smallest geographical area necessary to address the specific supply circumstances, and
- For the shortest practicable time period necessary to permit the correction of the extreme and unusual fuel supply circumstances

The oil industry is very familiar with procedures used for other temporary fuel waivers, and SD can use those rules as a model for its regulations. Here is an example of EPA waiver language, modified to fit the change South Dakota is contemplating:

The administrator can waive the minimum octane requirement if:

- Extreme and unusual fuel supply circumstances exist which prevent the distribution of an adequate supply of fuel to consumers.
- Extreme supply circumstances exist that are the result of a natural disaster, Act of God, pipeline or refinery equipment failure, or another event that could not reasonably have been foreseen or prevented and not the lack of prudent planning on the part of the suppliers of the fuel – and
- It is in the public interest to grant the waiver, and the state has given public notice to consumers in the area of the waiver and all parties in the motor fuel distribution system

In the instance a waiver is granted, we agree that an additional label must be required for the protection of consumers. However, the wording of the label proposed in section **20:01:09:01.01 Retail dispenser labeling**, and currently being used is misleading and will not protect consumers. Saying "This octane level may not meet minimum manufacturer specifications" is not accurate. 85 octane gasoline does not meet any engine manufacturer's specifications. The recommendation to "Consult your owner's manual before fueling" is also misleading, because it leads one to believe that there is a possibility that an owner's manual might say that 85 octane fuel is approved – and we are not aware of any owner's manual that contains such a statement. At the end of these comments, we have included examples of labels that more accurately portray what the labels should tell consumers.

The only other section ACE objects to is the final section, **20:15:06:01.01 Minimum octane rating.** For reasons mentioned above. We would also point out that "super" is a term often used to describe E10.

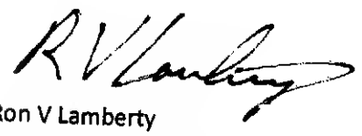
Other commonly requested fuels waivers cannot be issued to address concerns regarding the price of fuel. The use of 85-octane fuel in Eastern SD earlier this year was more an example of some dramatic price inequities that could be more easily and quickly repaired if the oil companies own policies did not prevent their customers from buying the same fuel from other nearby terminals that have the same product, at a lower price. It makes no sense that the solution to a supply problem would be more easily corrected by using lower quality fuel from Wyoming rather than an identical grade of fuel from Sioux City, Omaha, Minneapolis, or even Chicago – and yet oil company restrictions prevent marketers from doing so. In effect, South Dakotans are subsidizing the sale of cheap gasoline in other markets, and while something should be done to stop that practice as well, allowing other oil companies to profit while we are forced to accept substandard fuel is not a suitable solution.

ACE also believes that fines for violations of fuel regulations should be much higher. Currently, the fine for selling substandard gasoline – if enforced – would be less than half the amount a violator stood to profit on each load of fuel brought into Eastern South Dakota this winter. As such, those who choose to violate the rules could get caught every time fuel was delivered, and would still profit from breaking fuel laws.

We believe the current request to use 85 octane statewide is actually an opportunistic effort to use a manufactured "shortage" in one area of the state to lower the state's standards to a level that would allow them to sell a low-quality gasoline in an area that their own marketing decisions prevent them for accessing today.

As an alternative, we suggest the state make up that shortfall with 20 million more gallons of high-octane, extensively tested, cleaner burning, lower-priced South Dakota manufactured fuel available each year, by removing any remaining regulatory roadblocks and oil company restrictions to the widespread sale of E15. Setting a higher standard, rather than forcing consumers to settle for a lower standard, is the kind of example South Dakota should set for the rest of the nation.

Sincerely,



Ron V Lamberty
Senior Vice President
American Coalition for Ethanol

Suggested Labels for South Dakota Substandard Gasoline:

COFFEE CUP FUEL STOP
706 S. Main St.
ABERDEEN, SOUTH DAKOTA 57401
(605) 229-4793
Fax (605) 229-1337

July 30, 2012

Office of Weights and Measures
118 Capitol Avenue
Pierre, SD 57501

RE: Written Comments on 85 Octane in South Dakota

Department of Public Safety,

I am an owner of the Coffee Cup Fuel Stop in Vivian, South Dakota. This location is a Sinclair branded location that sells both gasoline and diesel fuel. Coffee Cup has been in business for 27 years in South Dakota. Over that time I have experienced many changes in the business.

Several of the branded refiners that had traditionally supplied South Dakota have departed, namely Conoco, Phillips, Farmland, BP/Amoco (in most of South Dakota), Mobil for a period of time, Kerr McGee, Champlin and others. Today, supply is the primary concern.

I support the remarks of Exxon/Mobil and Sinclair at the recent hearing, that supply is very challenging, and is only getting worse as the number of branded refiners decreases.

I would urge the State to do all it can to encourage refiners to remain in South Dakota by keeping their sales opportunities as great as possible. To that end, it is very important that the State allow the sale of 85 octane to the 99th meridian so that Coffee Cup and this geography can access the gasoline and diesel fuel supplied by Sinclair.

To not allow the product to be sold further east in South Dakota will certainly lead to very few brand choices because of the issue of direct supply vs. exchange supply from Wyoming Refining, a terrible price discrepancy, at times, along a superficial line at the 102nd meridian, and lastly, will bring into serious question whether all refiners will stay in South Dakota.

Sincerely,

Duane Harms

HARMS OIL COMPANY
"the friendly people"
P.O. Box 940
337 22nd Ave. S., Suite 100
BROOKINGS, SD 57006-0940

July 30, 2012

Harms Oil Company is a supplier of petroleum products and renewable fuels throughout South Dakota. We are happy to provide our customers with various products including: gasoline, ethanol, diesel fuel, and biodiesel. We are not a refiner of petroleum or renewable fuels. We are simply a wholesale supplier. As such, we have a good ability to understand supply aspects of the petroleum industry as well as that of the renewable fuels industry. We have been supplying ethanol to retailers since the 1980's. The specific products Harms sells to a customer are largely driven by that customer's business strategy. If the customer wants to brand his retail station, Harms can supply the brand and associated products. If the customer wants to market biofuels, Harms can supply the customer with those needs as well.

Another unique aspect of Harms Oil Company is the geography served in South Dakota. While some wholesalers only serve the western part of the state, or serve predominantly the eastern edge of South Dakota, or may only represent a single refiner/brand in a limited size supply geography, Harms is one of few wholesalers that will have the ability to understand the supply situation challenges associated with the middle fifty percent of our state. By incorporating a strategy to include additional equipment, dispatchers, and drivers, Harms Oil has made the necessary investment to effectively supply central South Dakota.

Based upon over 35 years of experience in the South Dakota Petroleum industry, we are of strong belief that a rule significantly limiting the sale of 85 octane gasoline could result in a substantial negative impact to South Dakota, its communities, and its consumers in the following ways:

1. An artificial boundary creates unfair trade between supply areas
2. A reduction the sales area could result in fewer supplier options
3. With fewer supply options, costs would ultimately be greater for South Dakota retailers, and ultimately the consumers of western and central South Dakota.

First, any "artificial boundary" put in place can have a substantial effect on the success of businesses in close proximity to that boundary. For example, if 87 octane were to be required throughout our state, a retailer at a South Dakota location (near the Wyoming border) would have to pay 15 to 20 cents more for their lowest-cost product than the retailer located in Wyoming (10 cents due to tax). Similarly, an 85 octane line (like the 102nd meridian) would give a buying advantage to the retailers located west of the line. April testimony in Pierre explained this advantage could have been in the range of 30-cents per gallon for a brief time in 2012. While the retailer on the west side of the line could enjoy the savings associated with gasoline delivered from the east when the price is

BROOKINGS: 605-696-5000
FAX: 605-696-5050
TOLL FREE: 1-800-585-4441

ABERDEEN: 605-225-4441
FAX: 605-225-7264
TOLL FREE: 1-800-568-5718

favorable, the retailer located east of the line would be forced to incur the additional expense when eastern gasoline is more costly. Any associated saving or expense created by a prescribed boundary would be diminished as that boundary moves east (due to the additional freight cost to be incurred).

Second, if an artificial boundary is imposed that limits the business reason (supply area) for a refiner to continue to supply gasoline to our state at the Rapid City terminal, the new rule will only have served to make worse an already poor supply situation. That supply area would need to be sufficient to create a reason for the supplier to continue to market in South Dakota.

It is important to note again, the current state of South Dakota's gasoline supply is poor. Additional support for this claim is the Governor's suspension of the DOT Hours of Service rules for petroleum drivers. In 2011, this hours of service rule was suspended in excess of 22% of the year. When one considers the seasonality of petroleum demand, it is fair to say that during times of high demand, the DOT rule is suspended half of the time.

Furthermore, as the Rapid City terminal is currently renovating the facility to accommodate both 82 and 85 octane gasolines, the terminal is not adding additional tankage, but rather dividing the current tankage between the products. This means gasoline shipments will be smaller and less efficient. With the reduced storage volume for a product like 85 octane gasoline, the possibility exists that 85 octane outages will increase in frequency at the Rapid City terminal.

Third, if fewer supply options are available at the Rapid City terminal, the basic laws of supply and demand would suggest that the retailers, and ultimately the residents of South Dakota, would incur a greater cost for gasoline on an ongoing basis.

Speaking to the July 20th testimony (page 98, line 18) regarding, "a big misunderstanding between gas and fuel," the statement indicates diesel fuel has greater supply problems than does gasoline. We generally agree with that statement. However, there is an important link between gas and fuel. The same refiners and shippers supply both gasoline and diesel fuel. In the last decade, Conoco and Phillips merged corporations into a single brand. Then, more recently ConocoPhillips made the decision to leave most of South Dakota, and ultimately all of South Dakota. Similarly, BP has left all South Dakota terminals with the exception of Sioux Falls. When these refiners chose to leave our state by no longer offering a branded gasoline supply, those same refiners also discontinued shipping diesel fuel for sale at South Dakota pipeline terminals.

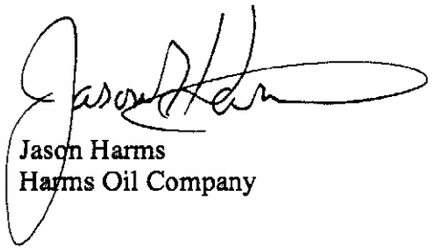
As South Dakota is considering the decision whether to allow for sale the gasoline products that are available for sale from the Rocky Mountain refining region, South Dakota must understand that if a refiner discontinues supplying gasoline into South

Dakota, the likelihood (as history has shown) is that the diesel fuel supplied by the same refiner may no longer be an available supply option for South Dakotans.

Finally, some have suggested looking to North Dakota as a model for 87 octane gasoline. While South Dakota might look similar to North Dakota in geography and proximity to the Rocky Mountain states (producing 85 octane), the supply situations are quite different. North Dakota is supplied by the Tesoro refinery in Mandan and the Cenex refinery in Laurel, Montana, which ships 87 octane gasoline. The Cenex (Laurel) gasoline is unable to be shipped through the Seminole pipeline for use in Wyoming or South Dakota. For that reason, to model South Dakota's new rule using North Dakota's practices would be impractical.

Nebraska is the state with a gasoline supply situation very similar to that of South Dakota (both are supplied with gasoline of varying octane). Nebraska adopts the NIST standard, with an important exception. In Nebraska, 85.5 octane is permitted west of the 101st meridian. Gasoline east of the 101st meridian must have an octane of 86 or higher. There are no Nebraska regulations that reference these differing requirements, which appear to be internal policies of the Nebraska Department of Weights and Measures. Of significance is that Nebraska is not part of the ASTM area III (the area in South Dakota west of the 102nd meridian). Nebraska is divided between ASTM areas I and II... and those areas are divided by ASTM at the 100th meridian. By choosing the 101st, Nebraska selected a separate and unique boundary to define the state's supply practice.

In conclusion, we urge South Dakota to adopt a rule both suitable and appropriate for our state given its unique supply aspects, not a national, "one-size fits all" methodology. We support a rule that would ensure that the people of South Dakota will have adequate gasoline supplies at competitive prices.



Jason Harms
Harms Oil Company

South Dakota Petroleum and Propane Marketers Association

PO Box 1058 • 320 E Capitol Avenue • Pierre, SD 57501
(605) 224-8606 • Fax (605) 224-8607 • Email: info@sdp2ma-sdacs.com

July 30, 2012

SD Department of Public Safety
Office of Weights and Measures
118 West Capitol Avenue
Pierre, SD 57501

Dear Mr. Pfahler-

Thank you for the opportunity to provide further comments on the Proposed Administrative Rule Language for 85 Octane in South Dakota.

We, the South Dakota Petroleum and Propane Marketers Association, urge the state of South Dakota to adopt rules that would allow the refiners in the Rocky Mountain region to continue to supply the Rapid City pipeline.

This can be accomplished by writing administrative rules that are consistent with rules from any of the states in the Rocky Mountain region such as Colorado, Wyoming, Montana, Utah, or Idaho and don't require derogatory labeling on pumps.

If the South Dakota rules are more stringent than the other Rocky Mountain States that these refiners presently produce gasoline for and require derogatory labeling on pumps, the refiner's ability or willingness to continue supplying gasoline into western South Dakota could be jeopardized.

This could result in major supply interruptions, potential price spikes, and could result in a loss of up to 70% of the gasoline supply that presently is available to western South Dakota.

We urge you to carefully consider these rules to ensure that refiners can continue to provide the citizens of South Dakota with a high quality gasoline at a reasonable cost that has been enjoyed for the past 30+ years in western South Dakota.

In addition to these comments, we would make the following suggestions/changes.

Section 20:01:09:01.01 Retail Dispenser labeling

We would suggest that this section is unnecessary. Existing law already requires marketers to identify conspicuously the type of product, the particular grade of the product, and the applicable automotive fuel rating.

We believe that the adequate "warning" decals are already in place. By posting the mandatory yellow/black octane decals, marketers are presently and have been informing the public as to the octane of gasoline. This has worked in the industry, not only in South Dakota, but nationwide for 50+ years. By requiring any other type of decal, you would be requiring marketers in only one state- South Dakota – to have such a decal.

In addition, we believe that the present name of "regular" for the 85 octane that has traditionally been sold west of the 102 meridian is acceptable. Again, by requiring South Dakota marketers to post "sub-octane" not only purveys a negative image on the product, but makes South Dakota an island among all other states. We would be the only state in the nation to have this requirement for a gasoline.

We also believe that an unintended consequences would be a financial hardship to marketers who will have to invest in custom made gasoline octane and grade defining signs that not only are posted on pumps, but also on the price signs. Because no other state requires gasoline to be labeled anything other than regular, unleaded plus, midgrade unleaded, super unleaded, or premium unleaded, you will now require marketers in South Dakota to have custom decals and price signs made.

We also believe that requiring custom made price signs could interfere with major oil company imaging.

20:01:10:03 Documentation.

We believe that this section mirrors what is required in federal law and we do not have any objections with this language with regards to gasoline, gasoline-oxygenate blends, reformulated gasoline, diesel fuel or fuel oils.

We don't believe that when straight ethyl alcohol is delivered, the supplier can be in compliance with this section. Ethyl alcohol has no octane value printed on bills of lading or invoices. (**I have attached a copy for your reference.**) This product can't meet these requirements.

Also, I can't verify that the following products can comply with this section as I have not seen a bill of lading or invoice: M85 and M100 fuel methanol, E85 and E100 fuel ethanol, liquefied petroleum (LP) gases, compressed natural gas, liquefied natural gas, biodiesel, kerosene, aviation gasoline, or aviation turbine fuels.

We would request that there is verification that these listed products have the information available from the refiner, importer, producer, or pipeline before including them in the final list.

20:01:10:04 Duties of refiners, importers, and producers.

We believe that this section mirrors what is required in federal law and we do not have any objections with this language. We would defer to comments made by the refiners, importers, and producers in regards to this section and agree with what they find acceptable.

20:01:10:05 Duties of distributors.

We believe that this section mirrors what is required in federal law and we do not have any objections with this language.

20:01:10:06 Duties of retailers.

We believe that this section mirrors what is required in federal law and we do not have any objections with this language.

20:15:06:01.01 Minimum octane rating.

We disagree with this section. We would suggest that the language reflect the gasoline grades as they have historically been marketed and what was believed to be legal prior to the attorney general's ruling in June 2012.

1. Regular Unleaded, 85 (west of the 102 meridian)
2. Regular Unleaded, 87 (east of the 102 meridian)

We believe, as states above, that by posting the octane decal, marketers identify to consumers which octane they are purchasing and believe that is adequate.

If you have any additional questions or I can be of assistance in any matter, please feel free to contact me at (605) 224-8606 or at dawna@sdp2ma-sdacs.com

Sincerely,

Dawna Leitzke

Dawna Leitzke, Executive Director
South Dakota Petroleum and Propane Marketers Association

9113

LOADING ORDER – TRUCK BILL OF LADING AND MANIFEST

Folio 07/020

NuStar Pipeline Operating Partnership, L.P.

YANKTON, SD
2608 East Highway 50
Yankton, SD 57078
Phone (605) 665-7477
Fax ( ) -

THIS IS TO CERTIFY THAT THE BELOW NAMED MATERIALS ARE PROPERLY CLASSIFIED, DESCRIBED, PACKAGED, MARKED AND LABELED, AND ARE IN PROPER CONDITION FOR TRANSPORTATION, ACCORDING TO APPLICABLE REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION.

SHIPPER CERTIFIES THAT THE GOODS COVERED BY THIS MANIFEST WERE PRODUCED IN COMPLIANCE WITH ALL REQUIREMENTS OF THE FAIR LABOR STANDARDS ACT, AS AMENDED.

IF SHIPMENT INCLUDES UNLEADED GASOLINE THE PRODUCT CONTAINS NO MORE THAN 0.05 GRAMS OF LEAD PER GALLON AND NO MORE THAN 0.005 GRAMS OF PHOSPHOROUS PER GALLON CONFORMING TO E.P.A. REGULATIONS - 40 CFR 80 -.

THIS GASOLINE IS CERTIFIED TO HAVE A VAPOR PRESSURE OF NO MORE THAN STATED BELOW.

RECEIVED SUBJECT TO TARRIFFS OR CONTRACT IN EFFECT THIS DATE.

THE CARRIER CERTIFIES THAT THE CARGO TANK SUPPLIED FOR THIS SHIPMENT IS A PROPER CONTAINER FOR THE TRANSPORTATION OF THIS COMMODITY AS DESCRIBED BY THE SHIPPER.

FOR CHEMICAL EMERGENCY – SPILL, LEAK, FIRE, EXPOSURE OR ACCIDENT CALL CHEMTREC 800-424-9300 DAY OR NIGHT. NUSTAR CHEMTREC CRM # 00675631

THE DRIVER BY SIGNING THIS TICKET HEREBY CERTIFIES THAT TRANSPORT WAS LOADED AS SPECIFIED.

SIGN HERE _____

DATE

MATERIAL SAFETY DATA SHEET AVAILABLE ON REQUEST.

BILL TO	SHIP TO
[redacted]L BLEND VARIOUS, SD	[redacted]L BLEND VARIOUS, SD 224-8607

SHIP FROM ADDRESS	DATE SHIPPED	CUSTOMER/ACCOUNT NO	MANIFEST NO.	MANIFEST DATE
R795 YANKTON, SD	07/27/12	[redacted]	[redacted]	07/27/12

FREIGHT TERMS		F.O.B.	SHIPPER	CUST ORDER NO.	FACILITY	LFCL NUMBER
PPD.	COLL		[redacted]			

DRIVER NAME	SHIP VIA – CARRIER ID / NAME	TRUCK NO. LIC NO.	TRAILER NO. LIC NO.	LOADING START/STOP	LOAD POS.
[redacted]	[redacted]		25	1336/1355	02

GASOLINE, CLASS 3, UN1203, PGII FLAMMABLE LIQUID
DENATURED ALCOHOL, 3, UN1987, PG II FLAMMABLE LIQUID

1 Cargo Tank
Gross Gsllons 300
Gross Gallons 1700

	OCTANE	GROSS	TEMP	GRAV	NET	MAX RVP
N-GRADE UNLEADED	87.0	300	78	62	296	.
N-GRADE UNLEADED		300				
HiTEC 6590		0.031				

CONVENTIONAL GASOLINE THIS PRODUCT DOES NOT MEET THE REQUIREMENTS FOR REFORMULATED GASOLINE AND MAY NOT BE USED IN ANY REFORMULATED AREA.
E0: CONTAINS NO ETHANOL. NOT INTENDED FOR BLENDING WITH ETHANOL ABOVE 10.0% WITH THE EXCEPTION OF E85
RVP DOES NOT EXCEEDED 9.0 PSI DETERGENT OVER-ADDITIZED FOR 10.0% ETHANOL

ETHANOL	.	1700	85	47	1673	.
ETHANOL		1700				

? - NO octane Rating

EMERGENCY RESPONSE INFORMATION

PRODUCT: Gasoline; Raffinate; Jet Fuel; Fuel Oil
Gasoline with Ethanol; Ethanol; Aviation Gasoline; Diesel Fuel; Kerosene

2008 Emergency Response Guidebook (2008 ERG) No. 128 (Ethanol – 2008 ERG No. 127)

Health Hazards – May be poisonous if inhaled or absorbed through skin. Vapors may cause dizziness or suffocation. Contact may irritate or burn skin and eyes. Fire may produce irritating or poisonous gases. Runoff from fire control or dilution water may cause pollution.

Fire or Explosion – Flammable/combustible material; may be ignited by heat, spark, or flame. Vapors may travel to a source of ignition and flash back. Containers may explode from heat of fire. Vapor explosion hazard indoors, outdoors, or in sewers. Runoff to sewer may create fire or explosion hazard.

EMERGENCY ACTION

Keep unnecessary people away; isolate hazard area and deny entry. Stay up wind; keep out of low areas. Positive pressure self-contained breathing apparatus (SCBA) and structural firefighters' protective clothing will provide limited protection. Isolate for 1/2 mile in all directions if tank, rail car, or tank truck is involved in fire. If water pollution occurs, notify the appropriate authorities.

Fire – **Small Fires:** Dry Chemical, CO2, water spray, or regular foam. **Ethanol:** use alcohol resistant foam. **Large Fires:** Water spray, fog, or regular foam. **Ethanol:** use alcohol resistant foam. Move container from fire area if you can do so without risk. Apply cooling water to sides of containers that are exposed to flames until well after the fire is out. Stay away from the ends of tanks. For massive fire in cargo area, use unmanned hose holder or monitor nozzles; if this is impossible, withdraw from area and let fire burn. Withdraw immediately in case of rising sound from venting safety device or any discoloration of tank due to fire.

Spill or Leak – Shut off ignition sources; no flares, smoking, or flames in hazard area. Stop leak if you can do it without risk. Water spray may reduce vapor; but may not prevent ignition in closed spaces. **Small Spills:** Take up with sand or other noncombustible absorbent material and place into containers for disposal. **Large Spills:** Dike far ahead of liquid spill for later disposal.

First Aid – Move victim to fresh air and call emergency medical care; if not breathing, give artificial respiration; if breathing is difficult, give oxygen. In case of contact with material, immediately flush eyes with running water for at least 15 minutes. Wash skin with soap and water. Remove and isolate contaminated clothing and shoes at the site.

PRODUCT: Ethane; LPG Mixture; N-Butane; LPG
Isobutane; Mixed Butanes; Propane

2008 ERG No. 115

Health Hazards – Vapors may cause dizziness or suffocation. Contact will cause severe frostbite. Fire may produce irritating or poisonous gases.

Fire or Explosion – Extremely flammable; may be ignited by heat, sparks, or flame. Vapors may travel to a source of ignition and flash back. Containers may explode from heat of fire. Vapor explosion hazard indoors, outdoors, or in sewers.

[redacted] EMERGENCY ACTION [redacted]

Fire – Keep unnecessary people away; isolate hazard area and deny entry. Stay up wind, keep out of low areas, and ventilate closed spaces before entering. Positive pressure SCBA and structural firefighters' protective clothing will provide limited protection. **Isolate for 1/2 mile in all directions if tank, rail car, or tank truck is involved in fire.**
Let tank, tank car, or tank truck burn unless leak can be stopped; with smaller tanks or cylinders, extinguish/isolate from other flammables.
Small Fires: Dry Chemical or CO2. **Large Fires:** Water spray or fog.
Move container from fire area if you can do so without risk. Apply cooling water to sides of containers that are exposed to flames until well after the fire is out.
Stay away from the ends of tanks. For massive fire in cargo area, use unmanned hose holder or monitor nozzles; if this is impossible, withdraw from area and let fire burn. Withdraw immediately in case of rising sound from venting safety device or any discoloration of tank due to fire.

Spill or Leak – Shut off ignition sources; no flares, smoking, or flames in hazard area. Do not touch or walk through spilled material; stop leak if you can do so without risk. Use water spray to reduce vapors; stop leak if you can do so without risk.

First Aid – Move victim to fresh air and call emergency medical care; if not breathing, give artificial respiration; if breathing is difficult, give oxygen. In case of frostbite, thaw frosted parts with warm water. Keep victim quiet and maintain body temperature.

PRODUCT: Cutback Asphalt (MC & SC); Asphalt Cement (All Grades)

2008 ERG No. 130 [redacted]

Health Hazards – **Asphalt (All types listed above):** Product May Contain or Release Hydrogen Sulfide. H_2S is a highly toxic, highly flammable gas which can be fatal if inhaled at certain concentrations. May cause irritation to eyes, skin and respiratory system. Avoid liquid, mist and vapor contact. Harmful or fatal if swallowed. Aspiration hazard, can enter lungs and cause damage. May cause irritation or be harmful if inhaled or absorbed through the skin. Avoid prolonged or repeated skin contact. Contains polycyclic aromatic compounds which have been shown to cause anemia, disorders of the liver, bone marrow and lymphoid tissues in rats following dermal a[redacted] and shipped hot so thermal burns are a[redacted]
Cutback Asphalt: Product May Contain or Release Hydrogen Sulfide. Asphaltic products may give off small amounts of Hydrogen Sulfide. Over exposure to vapors can cause eye and respiratory irritation, headaches, dizziness, loss of consciousness. Minimize breathing of vapors, fumes and mist. Launder contaminated clothing before using. Discard leather goods when they cannot be decontaminated. Observe good personal hygiene. Wash thoroughly after working with Asphalt and before eating or smoking.

Fire or Explosion –

Flash Point –	Cutback Asphalt (RC)	Cutback Asphalt (SC)	Asphalt Cements (All Grades)
	80-150°F (PMCC)	120-300°F (PMCC)	425°F Min. (C.O.C.)
Flammable Limits –	Lower: 0.7 Upper: 5.6%	Lower: 1.0 Upper: 7.0%	Lower: 0.9 Upper: 7.0%
Autoignition Temp. –	Not Available	Not Available	>500°F

Product will ignite when sufficient heat is applied. Thoroughly clean tanks or vessels, then check for combustible vapors, prior to, and during, welding or torch cutting on tanks or vessels. Bond and ground transfer equipment and containers

EMERGENCY ACTION (for all types of Asphalt listed above)

Fire/Spill Procedures – When heated above its flash point, this material will release flammable vapors which, if exposed to a source of ignition, can burn in the open or be explosive in confined spaces. Mists or sprays may be flammable at temperatures below the normal flash point. Dry chemical, halon carbon dioxide are the preferred extinguishing media. Foam and water fog are effective but can cause frothing. Big fires, such as tank fires, should be fought with caution. If burning liquid is 200°F or hotter, the use of water, water spray, or foam can cause frothing and even sudden boil-over of the tank, endangering the lives of personnel such as firefighters. If possible, pump the contents from the tank and keep adjoining structures cool with water. Water can be used to cool fire-exposed containers, structures and to protect personnel. If a leak or spill has not ignited, ventilate area and use water spray to disperse gas or vapor and to protect personnel attempting to stop a leak. Use water to flush spills away from sources of ignition. Do not flush down public sewers.

First Aid – Immediately flush eyes thoroughly with water for at least 15 minutes, including under the eyelids. Contact a physician immediately if irritation persists. Remove contaminated clothing. Immerse affected area in cool water to minimize severity of thermal burns. Seek medical attention immediately for treatment of burns. Remove to fresh air, if breathing has stopped, apply artificial respiration. Get immediate medical attention.

PRODUCT: Sulfur, Molten

2008 ERG No. 133

Health Hazards – Fire may produce irritating and/or toxic gases. Contact may cause burns to skin and eyes. Contact with molten substance may cause severe burns to skin and eyes. Runoff from fire control may cause pollution.

Fire or Explosion – Flammable/Combustible material. May be ignited by friction, heat, sparks, or flames. Some may burn rapidly with flare burning effect. Powders, dust shavings, boring, turnings, or cuttings may explode or burn with explosive violence. Substance may be transported in molten form. May re-ignite after fire is extinguished.

Public Safety – Isolate spill or leak are immediately for at least 10 to 25 meters (30 to 80 feet) in all directions. Keep unauthorized personnel away. Stay upwind. Keep out of low areas.

Protective Clothing – Wear positive pressure self-contained breathing apparatus (SCBA). Structural firefighters protective clothing will only provide limited protection

Evacuation – Large Spill – Consider initial downwind evacuation for at least 100 meters (330 feet).

Fire – If tank rail car or tank truck is involved in a fire, ISOLATE for 800 meters (1/2 mile) in all directions; also consider evacuation initial evacuation for 800 meters (1/2 mile) in all directions.

EMERGENCY ACTION

Fire – **Small Fires** – Dry Chemical, CO2, sand, earth, water spray or regular foam. **Large Fires** – water spray, fog or regular foam. Move containers from fire area if you can do it without risk. Fire involving tanks or tank trucks – Cool containers with flooding quantities of water until well after fire is out. For massive fire, use unmanned hose holders or monitor nozzles; if this is impossible, withdraw from area and let fire burn. Withdraw immediately in case of rising sound from venting safety devices or discoloration of tank. ALWAYS stay away from the ends of tanks.

Spill or Leak – Eliminate all ignition sources; no smoking, flares, sparks or flames in immediate area. Do not touch or walk through spilled material.

Small Dry Spills – With clean shovel, place material into clean, dry container and cover loosely; move containers from spill area.

Large Spills – Wet down with water and dike for later disposal. Prevent entry into waterways, sewers, basements, or confined areas.

First Aid – Move victim to fresh air. Call emergency medical care. Apply artificial respiration if victim is not breathing. Administer oxygen if breathing is difficult. Remove and isolate contaminated clothing and shoes. In case of contact with substance, immediately flush skin or eyes with running water for at least 20 minutes. Removal of solidified molten material from skin requires medical assistance. Keep victim warm and quiet. Ensure that medical personnel are aware of the material(s) involved, and take precautions to protect themselves.

Refer to specific product Material Safety Data Sheet (MSDS) or call for additional information.

Patrick Kelly
Senior Policy Advisor

Fuels Issues, Downstream

1220 L Street, NW
Washington, DC 20005-4070
USA
Telephone 202-682-8192
Fax 202-682-8051
Email kellyp@api.org
www.api.org

July 30, 2012

South Dakota Department of Public Safety
Southerland Building
118 West Capitol Avenue
Pierre, SD S7S01

Submitted via: DPSWM@state.sd.us

Subject Heading: **Comments Regarding 85 Octane Gasoline in South Dakota**

To Whom It May Concern,

The American Petroleum Institute (API) respectfully submits the following comments to the Department of Public Safety's Office of Weights and Measures rulemaking process and emergency rules regarding the sale of 8S octane (as determined by R+M/2 method) gasoline in South Dakota. API represents nearly S00 companies involved in all aspects of the oil and natural gas industry, including those that refine, transport and distribute gasoline consumed in South Dakota. API appreciates the opportunity to comment on this issue, and API members are committed to providing petroleum products to customers throughout the state that meet the safety, performance and environmental demands of customers and regulators. API member companies may also be submitting comments containing additional information.

South Dakota has issued emergency rules to allow 8S octane gasoline statewide. The regulatory changes to make the emergency order permanent have been proposed. API member companies strive to meet all state regulations, and emphasize the need for regulatory certainty in the marketplace. This certainty is achieved in part by clear, concise rules, with transparent processes when revisions are made. The emergency rules to immediately allow 85 octane gasoline could have been carried out in a more transparent manner with the opportunity for public comment. API appreciates the opportunity to comment on the regulatory initiative.

API has long supported the standard setting process at ASTM International for determination of fuel properties and characteristics, including the gasoline standard ASTM D4814-11a[1]. This ASTM standard mentions the effects of altitude on vehicle antiknock requirements in the appendix. In summary, it says that due to altitude, 8S octane gasoline will perform suitably well in vehicles designed for 87 octane in the portion of South Dakota west of the 102nd degree of west longitude. The downward adjustment for octane in the eastern remainder of the state is 0.7; or in other words, 86.3 octane gasoline will perform as well as 87 octane gasoline at sea level.

[1] Standard Specification for Automotive Spark-Ignition Engine Fuel

It is important to note the distinction between information included in the standard, and the non-mandatory information in an appendix. According to ASTM's *Form and Style of ASTM Standards*[2]:

> *Appendixes*— There are times when it is desirable to include in a specification additional information for general use and guidance, but which does not constitute a mandatory part of the specification. It is appropriate to include such informational material in appendixes. Examples of material that has been included in such appendixes are tables showing approximate relationship between tensile strength and hardness, list of preferred thickness of plate, sheet, and strip reproduced from other documents, tables of standard mass and standard sizes, information on typical applications of the material covered, and information on typical physical properties whose definite values are not prescribed in the specification.

As this information is not a required element of the standard, it would not be contrary to ASTM D4814-11a to permit octane grades lower than 87 to be offered in any part of South Dakota. ASTM's inclusion of this information in the appendix *does* however indicate that consideration of this information is warranted. It is appropriate for the Department of Public Safety to weigh this information in developing laws that affect the fuel choices made available to consumers.

The 2005 National Institute of Standards and Technology's Handbook 130[3] also addresses the altitude adjustment for octane. Section 3.2.5 *Prohibition of Terms*; Table 1 identifies terms that are prohibited from use unless a fuel meets a minimum octane specification (e.g. preventing an 87 octane gasoline from being marketed under the name "premium"). This prohibition from using certain terms in marketing does not preclude the use of other names in marketing (such as V-Power or Ultimate). The intent of the information provided in Table 1 is not to require specific terms be used, but rather identify what terms may not be used unless the corresponding fuel's octane levels meet specific minimums. This intent is further evidenced by not including Table 1 in Section 2 *Standard Fuel Specifications*, but rather the placement of Table 1 in Section 3 *Classification and Method of Sale of Petroleum Products*.

Fuels policy changes that involve potential harm to consumer investments in their vehicles should be based on research demonstrating the impacts. It is widely recognized that a suitable octane, for which the engine was designed, should be used in consumer's vehicles, and API is not aware of new data or analysis demonstrating why the altitude adjustment for octane information in the appendix of ASTM D4184-11a should be reconsidered. Despite its non-mandatory status, the appendix of D4814-11a contains the best available information on an appropriate altitude adjustment for octane and should be the prevailing consideration for appropriate gasoline octane offered in the marketplace. For this reason, API does not support the use of 85 octane gasoline in the portion of South Dakota east of the 102nd meridian. We do support allowing the use of 85 octane gasoline in the higher altitude portion of the state west of the 102nd meridian as identified in the appendix of ASTM D4814-11a.

As vehicle damage could occur from offering 85 octane fuels east of the 102nd meridian, conspicuously placed, strong warning language as suggested in the Proposed Administrative Rule is warranted, should the state continue with plans to allow 85 octane statewide. The term "sub-regular" is used to in the Proposed Administrative Rule to describe 85 and 86 octane gasoline statewide. The National Institute of Standards and

---

[2] http://www.astm.org/COMMIT/Blue_Book.pdf
[3] Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality

Technology's Handbook 130 states that areas identified in the appendix of ASTM D4814-11a as altitude reduction Areas IV and V may use the term "Regular, Unleaded" for gasoline meeting an 85 minimum octane standard. Given the guidance in ASTM D4814-11a, it is clear that Area III (which includes the section of South Dakota west of the 102nd degree of west longitude) should also allow those terms to be used. Handbook 130 uses the term "economy" for all other areas of the country that meet an 86 minimum octane standard. Handbook 130 does not address 85 octane in other areas of the country (including areas east of the 102nd meridian) and, should the state finalize regulations allowing 85 octane statewide, the state's preferred term "sub-regular" is an acceptable recommendation. In summary, API recommends the labeling requirements established in the Proposed Administrative Rule require use the following terms:

Octane	Areas in South Dakota west of the 102nd degree of west longitude	Areas in South Dakota east of the 102nd degree of west longitude
85 (R+M/2)	Regular, Unleaded	Sub-Regular
86 (R+M/2)	Regular, Unleaded	Economy
87 (R+M/2)	Midgrade, Plus	Regular, Unleaded

API appreciates the opportunity to comment on this proposal. If you have any questions regarding these comments, please contact me at (202) 682-8192.

Regards,

Patrick Kelly
Senior Policy Advisor

MAGELLAN
MIDSTREAM PARTNERS, L.P.

THOMAS L. BYERS
Senior Government Affairs Rep.
One Williams Center
Tulsa, OK 74172
(918) 574-7011
(918) 574-7019 (fax)
tom.byers@magellanlp.com

July 30, 2012

South Dakota Department of Public Safety
Sutherland Building
118 West Capitol Avenue
Pierre, SD 57501

Re: Comments Related to the Sale of 85 Octane Gasoline in Eastern South Dakota

Dear Sir/Madam:

Magellan Midstream Partners (Magellan) appreciates the opportunity to comment on the proposal to permit the sale of 85 octane gasoline in South Dakota. While the intent of the rule is to expand available gasoline supplies throughout the state, it could in fact have the opposite effect in eastern South Dakota. Negative supply issues may develop at our Sioux Falls and Watertown, South Dakota petroleum distribution terminals if there is a demand for 85 octane gasoline because of the proposed rule. *Therefore, we are opposed to the sale of 85 octane gasoline in eastern South Dakota.* We also support the position expressed by the American Petroleum Institute in its written comments dated July 30, 2012.

Magellan owns and operates over 9,600 miles of petroleum pipelines and more than 80 petroleum products and renewable fuels distribution terminals located throughout 22 states, including those in Sioux Falls and Watertown. We operate our pipeline as a common carrier pipeline system and we generally do not own the products transported through our pipelines and stored at our terminals. These products are owned by our customers which are referred to as "shippers" or "position holders" and which include refiners, petroleum traders, petroleum marketers, renewable fuel producers and renewable fuel marketers.

While the proposed rule is not a requirement to reduce the gasoline octane from 87 to 85, it would legalize the sale of 85 octane gasoline to motorists in eastern South Dakota. Although concerns have been raised regarding consumer issues, automobile warranty statements and engine durability, national gasoline standards and the adequacy of retail labeling, market dynamics could create a demand for 85 octane gasoline in the eastern part of the state.

Adding a new grade of gasoline to our system would potentially increase supply outages at terminals. Magellan's terminals in Sioux Falls and Watertown receive refined petroleum products via the Magellan pipeline system from refineries in Texas, Oklahoma, Kansas, Minnesota and Wisconsin as well as other third party pipelines which connect into the Magellan system. In fact, Magellan's pipeline system is connected, directly or indirectly, to over 40% of the refining capacity in the United States. Every refinery with access to the Magellan system manufactures 87 octane gasoline. Replacing 87 octane with 85 octane gasoline would greatly reduce the number of refinery origin sources which in turn would lead to increased terminal outages.

During the past two and a half years we have experienced a few no-load days for regular unleaded gasoline at our terminal in Sioux Falls. A no-load day occurs when none of our customers load that particular product during a 24-hour period. Although there were more no-load days at Watertown during this same time frame, unleaded gasoline

was generally available at our Sioux Falls terminal and other Magellan terminals in the region.. For the reasons mentioned earlier, the legalization of 85 octane gasoline throughout the entire state would potentially increase the number of outages at both of our terminals in the state.

Reducing the minimum octane requirement from 87 to 85 would potentially create the need to add new terminal infrastructure. A percentage of the gasoline loaded at our terminals in eastern South Dakota is delivered to retail stations and commercial accounts in Minnesota, which is not considering a change to their octane requirements. In order to add a new grade of gasoline at our terminals in South Dakota, we would need to build adequate storage for the new product in strategic locations on our pipeline system along with new storage at our terminals. The new storage would require long-term financial commitments by our customers, which is unlikely. Even if we did obtain the customer commitments, permitting and construction of the additional storage would take 18-24 months to complete. Also, offering storage and distribution services for 85 octane gasoline would increase loading time at the terminal.

Downstream blending could have quality implications. The proposed rule would potentially create a market for downstream blending of natural gasoline (sometimes referred to as drip gasoline) into gasoline after it is loaded at the petroleum terminal. In other words, company X could load 87 octane gasoline and 10% volume ethanol which creates an 89 octane fuel. Company X could then blend approximately 10% volume percent natural gasoline available at an ethanol or bulk plant into the fuel which would reduce the octane. Blending gasoline components downstream of pipeline and terminal operations increases the possibility of quality implications and triggers federal reporting requirements.

Trucking 85 octane gasoline long distances has negative consequences. Pipelines remain the safest, most reliable and most cost effective mode of transportation when moving large volumes of liquid energy from where it's produced to where it's consumed. Transporting 85 octane gasoline to eastern South Dakota from the traditional Rocky Mountain supply sources in central and western South Dakota via transport truck would create increased traffic throughout the state as well as increased air emissions and would result in transportation inefficiencies.

We appreciate the opportunity to comment on the proposed rule and we request that you take our concerns into consideration as you move forward. If you have questions regarding these comments or if you would like any additional information please contact Tom Byers at (918) 574-7011.

Sincerely,

Thomas L. Byers
Senior Government Affairs Representative

ExxonMobil
Refining & Supply Company
700 ExxonMobil Road
P.O. Box 1163
Billings, Montana 59103-1163
406 657 5201 Telephone
406 657 5373 Facsimile

Monica M. Mainland
Refinery Manager

July 30, 2012

ExxonMobil
Refining & Supply

South Dakota Department of Public Safety
Office of Weights and Measures Program
118 West Capitol
Pierre, SD 57501-2000

To Whom It May Concern:

ExxonMobil appreciates the opportunity to provide final comments pertaining to the issue of gasoline minimum octane levels in South Dakota, building on my testimony at the public hearing held in Pierre, South Dakota on July 20, 2012.

As noted in my testimony, the ExxonMobil Billings, Montana refinery has been in operation since 1949, and has nearly tripled its capacity since that time. We are proud to be a safe and responsible employer and member of the Billings community, and to provide reliable supply of quality petroleum products to our customers throughout the Rocky Mountain region, including South Dakota. The Billings refinery utilizes an extensive system of industry pipelines that distribute its products to several states including Montana, Wyoming, Utah, Colorado, Washington, Idaho, and South Dakota.

Gasoline with 85 or 85.5 octane has been the predominant selling grade for many years in the Rocky Mountain region. Regular 85 octane product is available in Wyoming, Colorado, Utah and Idaho; Montana's Regular gasoline has an 85.5 octane. We are not aware of any consumer complaints or vehicle performance issues with this product. The American Society for Testing and Materials International (ASTM) and the National Institute of Science and Technology (NIST), allow for lower octane grades at higher elevation levels compared with sea level.

Specifically, ASTM D4814 (the standard for gasoline) provides a discussion on the impact of elevation on gasoline octane requirements. At higher elevations, where the density of air is lower, there is a lower tendency for engine knock at a given octane level. In Areas III (which includes the portion of South Dakota west of the 102nd degree of west longitude) IV and V, an 85 octane gasoline would be expected to perform as well as an 87 octane gasoline at sea level.

NIST Handbook 130 states that the Areas IV and V identified in ASTM D4814 as Altitude Reductions may use the term "Regular" or "Unleaded" for gasoline meeting an 85 minimum octane standard. Although there is no mention of Area III, the above referenced ASTM D4814 guidance suggests that Area III (which includes the section of South Dakota west of the 102nd degree of west longitude) should also allow similar use of marketing terms. We suggest that South Dakota adopts an approach similar to Montana and consider legislation that amends Table 1 of Handbook 130 to include Area III in the heading over the column to allow the term Regular to be used for 85 octane, as shown below:

Tabie 1. Minimum Antiknock index Requirements		
Term	Minimum Antiknock Index	
	ASTM D 4814 Aititude Reduction Areas iii, iV and V	Aii Other ASTM D 4814 Areas
Premium, Super, Supreme, High Test	90	91
Midgrade, Plus	87	89
Regular Leaded	86	88
Regular, Unleaded (alone)	85	87
Economy	--	86

This recommendation is consistent with the API letter to the South Dakota Department of Public Safety on July 30, 2012 which also recommends that "*Given the guidance in ASTM D4814-11a, it is clear that Area III (which includes the section of South Dakota west of the 102nd degree of west longitude) should also allow those terms to be used…. [API] recommends the labeling requirements established in the Proposed Administretive Rule require use of the following terms: 85 octane as Regular, Unleeded for Areas in South Dakota west of the 102nd degree of west longitude.*"

The Rocky Mountain region has been the last area in the country to transition to a blend of gasoline with 10 percent ethanol or E10 to comply with the federal Renewable Fuel Standard. The transition to E10 changes product supply logistics at refineries, pipelines and terminal operations. Instead of shipping a finished 85 octane gasoline through the distribution system, refineries now ship a gasoline blendstock that would be blended with ethanol at the terminal prior to loading on the delivery truck to meet the ASTM and NIST standards. Since ethanol increases octane, the region's pipelines are now changing the octane of the blendstock shipped from 85 to 81.5. Rapid City, SD is at one end of the pipeline supply chain that is highly influenced by markets in Wyoming, Colorado and Utah – the latter allow 85 octane. Requiring a minimum 87 octane Regular gasoline at Rapid City, is not consistent with current, efficient Rocky Mountain gasoline supply. In addition, the ability to deliver sufficient quantities of premium gasoline to Rapid City to blend the 87 octane product is also a concern, due to segregation issues on connecting pipelines and limited premium storage capacity. This would result in 200% increase in the premium demand, but yet, we know that today the system is challenged to supply a 150% increase in premium gasoline demand when the Sturgis motorcycle rally comes to the area.

We appreciate the opportunity to provide comments on gasoline minimum octane levels in South Dakota, an issue that is very important for the ExxonMobil Billings refinery and its continued supply of fuels to the Rocky Mountain region in the most efficient, safe and reliable manner.

Sincerely,

Monica Mainland

July 30, 2012

Mr. David L. Pfahler
Director
Office of Weights & Measures
South Dakota Department of Public Safety
118 West Capitol Avenue
Pierre, SD S7S01

Re: South Dakota Proposal Rule on Sub-Octane

Dear Mr. Pfahler:

The Association of Global Automakers, Inc. (Global Automakers) is pleased to provide these comments regarding the South Dakota Department of Public Safety's (DPS) proposed rule to amend current regulations to allow sub-regular 8S octane (AKI) gasoline to be sold in South Dakota. Current regulations limit gasoline octane to levels recommended by ASTM and NIST. Global Automakers supports the continuation of octane standards that are consistent with ASTM and NIST recommendations, and, as explained further below, we strongly oppose allowing the sale of 8S octane (AKI) gasoline in South Dakota or elsewhere in the United States.

Global Automakers represents international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. Our members' market share of both U.S. sales and production is around 40 percent and growing. We work with industry leaders, legislators, regulators, and other stakeholders in the United States to create public policy that improves motor vehicle safety, encourages technological innovation and protects our planet. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and development of vehicles that can enhance Americans' quality of life. For more information, visit www.globalautomakers.org.

In analyzing this octane issue for South Dakota, we have consulted our colleagues throughout the automobile and engine manufacturers industry, including the Auto Alliance (which represents other automakers), the Engine & Truck Manufacturers Association (which represents medium and heavy duty engine and truck manufacturers as well as engine makers for buses and construction, farm, and other non-road equipment), the Motorcycle Industry Council (which represents manufacturers of both on-highway and off-road motorcycles), the Recreational Off-Highway Vehicle Association, the Specialty Vehicle Institute of America, the Outdoor Power Equipment Institute, and the National Marine Manufacturers Association. The DPS has already received comments from most, if not all, of these automotive and engine related groups, supporting the same position as Global Automakers, i.e., the continuation of the minimum ASTM specification of 87 octane (AKI) for the entire state. There is a clear consensus among all vehicle and engine makers on this matter.

Automakers rely on the availability of gasoline meeting ASTM requirements to ensure the proper long-term operation of vehicles and engines. The 87 octane requirement is needed to ensure that consumers in South Dakota get the appropriate gasoline for their vehicles to protect the significant investments that they make in vehicles and other gasoline powered equipment.

GlobalAutomakers

Every automaker recommends gasoline with a minimum of 87 octane AKI for all vehicles regardless of where they are driven. These recommendations are included in every owner's manual. Honda's recommendation and warnings are typical. It reads as follows:

> "Fuel Recommendation – Unleaded gasoline, pump label 87 octane or higher
>
> Use of a lower octane gasoline can cause a persistent, heavy metallic knocking noise that can lead to engine damage."

For some high performance engines, Honda and other manufacturers recommend even higher octane levels. The owner's manuals for many automakers are available at the Edmunds.com website; see http://www.edmunds.com/ownership/howto/articles/120189/article.html.

Because vehicles are complex products, automakers have worked with suppliers and other stakeholders to develop broad based standards for all aspects of vehicles. For instance, the auto and allied industries have over 700 committees with over 10,000 volunteers within the Society of Automotive Engineers to review, update, and establish new standards governing designs of all automotive systems from steering to brakes to powertrains to air conditioning. Similarly, there are standards for all automotive fluids, including fuels, lubricants, brake fluid, etc. The auto and allied industries work cooperatively with a myriad of other industry stakeholders in setting automotive standards.

Gasoline quality standards are critically important for automakers and consumers to ensure proper performance, drivability, durability, low emissions, and optimal fuel economy. Therefore, the auto and oil industries have had a longstanding ASTM committee established in 1904 to focus on fuel quality standards so that automakers can be confident that the gasoline available to customers is compatible with the design of vehicles. These specifications are contained in ASTM document D-4814 and cover a range of properties, including volatility, octane ratings, distillation, corrosion, gum content, sulfur, and oxidation stability. See www.astm.org for details on ASTM, committee D02, and D-4814, incorporated herein by reference.

The ASTM D02 committee meets twice a year in June and December. The committee has a current membership of about 1S00 professionals and experts and has jurisdiction of over S80 standards, published in five volumes of the Annual Book of ASTM Standards. These standards have, and continue to play, a preeminent role in all aspects relating to the standardization of petroleum products and lubricants.

The automotive industry takes standards-setting very seriously. Automotive standards are not set casually. All automotive standards are developed though a data-driven, collaborative, consensus process, only after extensive deliberation, rigorous testing, analyses, and peer review. Much of the engine/fuel research is done through a separate automotive and oil industry collaborative called the Coordinating Research Council; see www.crcao.com.

GlobalAutomakers

The proper gasoline octane rating is important to ensure proper combustion of the fuel in the engine. Sub-octane gasoline can cause detonation or pre-ignition of the fuel, which is commonly called engine knock. Sustained detonation can cause engine damage. Modern engines provide some protection by the use of knock sensors. When the vehicle computer senses detonation conditions, the ignition timing of the engine is retarded to reduce or prevent knock. Retarded ignition timing results in higher vehicle emissions, lower fuel economy, and reduced performance.

The more serious ill effects of using sub-standard gasoline (similar to the situation when sub-standard lubricants are used) are longer term, cumulative and irreversible. Using sub-standard gasoline will result eventually in excessive wear and tear on internal engine parts, such as, pistons, piston rings, and cylinders, leading to loss of power, excessive oil consumption, and reduced engine life. These problems usually occur well after engines are out of warranty and result in higher maintenance costs for consumers or the extra cost of pre-mature replacement of engines or equipment. Furthermore, even if these issues occur while the vehicle is still under warranty, damage caused by the use of improper fuel may not be covered by the warranty. For example, the Subaru owner's manual language states: "Fuel system damage or drivability problems which result from the use of improper fuels are not covered under the Subaru Limited Warranty."

In light of the controversy over octane ratings in South Dakota, at its June 2012 meeting, the ASTM D02 committee decided to review their octane specifications. A work group has been formed and is beginning its review. As mentioned above, we support the continuation of the ASTM 87 octane specification for the entire state of South Dakota; however, if DPS decides to continue consideration of allowing sub-octane gasoline, you should wait for the recommendations of the ASTM committee's review of the issue before making any final decisions. At the July 20, 2012 DPS public hearing, other witnesses also supported waiting for the results of the ASTM committee's review of octane specifications before final decisions are made.

Even during the emergency period, it is absolutely necessary to have the strongest possible pump labeling language prominently displayed on pumps to caution consumers. Unfortunately, many consumers do not heed pump warning labels and base gasoline purchases almost exclusively on pump prices.

In summary, DPS should maintain its current regulations that rely on ASTM specifications for minimum gasoline octane for gasoline sold in South Dakota.

- Today's vehicles need 87 octane gasoline or higher.
- Starting in the 2012 model year, new technologies are being introduced to meet new federal EPA greenhouse gas emissions standards and new federal DOT fuel economy standards. Many of these technologies are more sensitive to octane levels. South Dakota consumers will not get the benefits of these standards unless the fuel sold is compatible with their vehicles (i.e., 87 octane or higher).
- There is no reason to believe that maintaining the current 87 octane requirement will have a negative effect on fuel supplies in South Dakota. There is nothing to prevent current suppliers from producing 87 octane gasoline for South Dakota. There are multiple suppliers that can provide fuel to South Dakota under any circumstances. Past experience with unplanned refinery outages or supply disruptions due to severe weather events (such as hurricanes) have not led to serious supply outages.

GlobalAutomakers

At the July 20, 2012 hearing, some witnesses cautioned that pipeline companies could set requirements which may present logistical problems for refiners to deliver 87 octane gasoline to South Dakota. While we understand this could be a constraint, the oil industry witnesses also acknowledged that they are consulted by pipeline companies before the pipeline companies establish or change their policies. We believe it is likely that these pipelines companies would be willing to also consider input from DPS and the Rapid City terminal operators on how the pipeline policies could impact South Dakota. The oil industry witnesses at the public hearing confirmed that there are no technical reasons that they cannot produce 87 octane gasoline and that they today make a range of products with octane levels ranging even higher than 87.

Global Automakers appreciates the opportunity to provide these comments on the proposed rule by DPS. If you have any questions, please feel free to contact John Cabaniss, Director, Environment and Energy, at (202) 650-SS62 or jcabaniss@globalautomakers.org.

Sincerely,

Michael J. Stanton
President & CEO

It appears that the oil refineries have South Dakota in a box. We are pretty much at the end of the supply pipelines at both ends of the State. Even though the refineries supplying the western side of the state know that 87 octane generally is the car manufacture's recommended octane level, the refinery's position is that they are only going to supply 85 octane as regular and some refineries are planning to move the octane down to 81/82 octane and spike it with ethanol to raise it to 85 octane.

I totally understand the supply problem and the vast economic impact if the refineries do not supply gasoline to western SD, as they have threatened if 85 octane is not legal.

However, the Attorney General has opined that 85 octane is illegal in all of South Dakota, not just east of the 102 Meridian. So how do you write a rule that would enforce an illegal interpretation of the law?

Mike Vehle, [redacted] Mitchell, SD [redacted]